

**CITY OF NEWBERG COUNCIL AGENDA
AUGUST 1, 2011
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

Mission Statement

The City of Newberg serves its citizens, promotes safety, and maintains a healthy community.

Vision Statement

Newberg will cultivate a healthy, safe environment where citizens can work, play and grow in a friendly, dynamic and diverse community valuing partnerships and opportunity.

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, with an opportunity to speak for no more than 5 minutes per speaker allowed)

VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2011-2958** authorizing the city manager to enter into a contract with Hughes Fire Equipment, Inc., an Oregon company, for the refurbishment (remount) of one ambulance. (Pgs. 3-5)
2. Consider a motion approving June 6, 2011, June 20, 2011, and July 5, 2011, City Council minutes. (Pgs. 7-34)

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.

VII. NEW BUSINESS

Consider a motion approving **Resolution No. 2011-2963** authorizing the Mayor to amend the Employment Agreement with Daniel J. Danicic on behalf of the city. (Pgs. 35-45)

VIII. COUNCIL BUSINESS

Discussion on the Initiative Petition

IX. ADJOURNMENT

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Recorder'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 the City Recorder at (503) 537-1283. For TTY services please call (503) 554-7793

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 land use hearings, which requires a specific public hearing process. 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: August 1, 2011

Order ___ No.	Ordinance ___ No.	Resolution <u>XX</u> No. 2011-2958	Motion ___	Information ___
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SUBJECT: Ambulance Refurbishment (Remount)

Contact Person (Preparer) for this
Motion: Frank Douglas
Dept.: Fire
File No.:

RECOMMENDATION:

Adopt **Resolution No. 2011-2958** authorizing the city manager to enter into a contract with Hughes Fire Equipment, Inc., an Oregon company, for the refurbishment (remount) of one (1) ambulance.

EXECUTIVE SUMMARY:

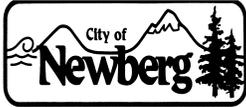
Newberg Fire Department (NFD) owns a 2000 Life Line Superliner ambulance. To save money, NFD desires to have this ambulance remounted. In a "remount" the ambulance's patient compartment is refurbished and placed onto a new chassis. Ambulance remounts are standard practice in the ambulance industry. Remounts are expected to save between \$30,000.00 and \$40,000.00. NFD has reviewed specifications for the ambulance refurbishment and remount. We have found the specifications meet our requirements and are within budget.

FISCAL IMPACT:

\$180,000.00 is budgeted in Fund 33 of the 2011-2012 General Fund Budget. This amount includes the cost of the refurbishment/remount, a critical care monitor/defibrillator, a power stretcher, a Mobile Data Terminal and radios.

STRATEGIC ASSESSMENT:

This purchase will allow NFD to maintain its small fleet of reliable ambulances. This ambulance is needed to comply with required Yamhill County Ambulance Service Area Standards.



RESOLUTION No. 2011-2958

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH HUGHES FIRE EQUIPMENT, INC., FOR THE REFURBISHMENT/REMOUNT OF A 2000 LIFE LINE SUPERLINER AMBULANCE

RECITALS:

1. The Newberg Fire Department has been operating an ambulance service since 1994.
2. Newberg Fire Department has a strategic plan for the replacement of emergency vehicles. 2012 is the planned year for the purchase of an ambulance, replacing an 11 year old ambulance.
3. In 2000, NFD purchased a new Life Line Superliner ambulance. The manufacturer of this ambulance was Life Line Emergency Vehicles Inc., located in Iowa. The dealer for this purchase was Hughes Fire Equipment, Inc., a Springfield, Oregon company.
4. NFD desires to have Life Line Emergency Vehicles, Inc. refurbish and remount the 2000 Life Line Superliner ambulance. Life Line Emergency Vehicles is the original manufacture of the ambulance.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The 2011-2012 City budget includes the refurbishment of an ambulance.
2. Municipal Code Section 3.25.080(F)(10), entitled "Solicitation methods for classes of contracts," allows the City of Newberg to enter into a "Sole Source Contract."
3. The City Council acting as the Contract Review Board makes the following findings:
 - a. Hughes Fire Equipment, Inc. specializes in ambulance sales, repairs, and maintenance. This vendor is also a single source for Oregon.
 - b. The City of Newberg selects Hughes Fire Equipment, Inc. (dealer) to refurbish a 2000 Life Line Super Liner ambulance at a cost not to exceed \$180,000.00 including radios, emergency lighting, medical equipment, and Mobile Data Terminal (MDT).
4. The city manager is authorized and empowered to sign all necessary documents, due all necessary acts, and enter into all necessary agreements for the purchase of the ambulance from Hughes Fire Equipment, Inc.

5. The city attorney will approve as to form and content the contract and purchase agreement for the refurbishment of the ambulance.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: August 2, 2011

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of August, 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this _____ day of August, 2011.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

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

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 1, 2011

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

SUBJECT: Approve the June 6, June 20, and July 5, 2011, City Council Meeting minutes.

Contact Person (Preparer) for this Motion: Norma Alley, City Recorder
Dept.: Administration

RECOMMENDATION:

Approve the June 6, June 20, and July 5, 2011, City Council minutes for preservation and permanent retention in the City's historical records.

EXECUTIVE SUMMARY:

The City of Newberg City Council held a public meeting and minutes were recorded in text. In accordance to Oregon State Records Management law, the City of Newberg must preserve these minutes in hard copy form for permanent retention.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

None.

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CITY OF NEWBERG CITY COUNCIL MINUTES
JUNE 6, 2011
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

A work session was held prior to the meeting. A presentation from Waste Management was given regarding a rate increase request. No action was taken and no decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:00 PM.

II. ROLL CALL

Members

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

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Janelle Nordyke, Finance Director	Jessica Nunley, Assistant Planner
	Barton Brierley, Planning and Building Director	Norma I. Alley, City Recorder
		Jennifer Nelson, Minutes Recorder

Others

Present: Sam Farmer, Cathy Stuhr, Julie Fugate, Mike Gougler, Corinne Waterbury, Lewis H. Schaad, Lee Does, and Sid Friedman

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, reported that a county emergency management drill will be held this Wednesday, June 8, 2011. The goal for Newberg will be to open the Emergency Operations Center in the Public Safety Building (PSB) and go through the process of an emergency situation; there will be no field operations staged in the community. He reminded Council of the Local Government Dinner on June 16, 2011, and asked them to give their RSVP's to the city recorder if they have not done so already. He offered information about the emergency preparedness fair in McMinnville on June 14, 2011, and a presentation on what to do if a major earthquake hits; information is on the city's website. In response to a question by a citizen regarding missing segments of audio recordings from recent meetings he explained the segments are not intentionally being omitted, but there have been technical glitches when turning the digital recorder off to go into executive sessions and turning it back on to come back into regular session. It has been a challenge to combine those separate audio recordings to have a full recording. He is working with the IT department to resolve this issue and to continue to get full recordings onto the website as quickly as possible; he reminded everyone the written minutes are the official permanent record of the meetings.

V. PUBLIC COMMENTS

None.

VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2011-2949** authorizing the city manager to enter into a contract with Kizer Excavating Company for Crestview Drive street improvements.
2. Consider a motion approving **Resolution No. 2011-2950** authorizing the city manager to enter into an agreement with the State of Oregon to exchange federal funds for state funds.
3. Consider a motion approving **Resolution No. 2011-2951** authorizing the city manager to execute an agreement with the State of Oregon providing a marked crosswalk across Highway 219 at the intersection of Everest Road.

MOTION: Shelton/Witherspoon approving the Consent Calendar including **Resolution No. 2011-2949, Resolution No. 2011-2950, and Resolution No. 2011-2951.** (7 Yes/0 No) Motion carried.

VII. PUBLIC HEARINGS

1. Consider a motion approving **Ordinance No. 2011-2740** amending the Urban Growth Boundary, revising the Economic Opportunities Analysis, amending the Comprehensive Plan Map and text, and amending the Transportation System Plan.

TIME – 7:07 PM

Mayor Andrews introduced the hearing and called for any conflicts of interest or abstentions; none appeared. He explained this will be the first of two readings; the staff report and public testimony will be heard this evening, then the hearing will be closed and deliberations will continue on June 20, 2011.

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

Councilor Marc Shelton asked what size of acreage they were looking for originally versus what they settled for here. Staff replied approximately four to five acres.

Mayor Andrews asked what the physical location of Action Equipment is. Staff replied it is on Hayes Street behind the Travel Lodge, next to Urgent Care and Parr Lumber.

Councilor Shelton asked if staff has looked at the one hundred and thirty-two acres in terms of existing agricultural production, what is being produced, and how much is productive versus what is just being labeled as agricultural. Staff pointed out the areas currently used for grass seed production and a filbert orchard. He also pointed out an area being used as a riding stable and another as a jam packing plant; both are agriculture uses and benefit the community, but are not producing crops. Councilor Shelton continued by asking if the Oregon Administrative Rules (OARs) look specifically at agricultural land Newberg has or in the county as well. Staff replied the state looks at soil classifications to designate land with higher numbers into the Urban Growth Boundary (UGB) last and soils with lower classifications are to be designated earlier; they do not look at the land use.

Councilor Denise Bacon spoke of written testimony which claimed there is a lot of vacant industrial land in Newberg; she asked staff what the City really has that is vacant. Staff replied they have identified twelve sites on page 204 of the packet and there is a map on page 205. Councilor Bacon asked how the current owners of the property feel about the expansion. Staff stated there have been a number of conversations and those expressing an opinion were agreeable to the change.

Mayor Andrews asked staff to clarify the population figures for 2010 and why the City is not using the United States Census. Staff replied they are using the revised Portland State University (PSU) estimate from July 21st and adding the population living between; so it includes the 2010 figures plus those in the UGB.

Councilor Stephen McKinney asked if this was on the north or south of the hwy; staff said it was on the north. Councilor McKinney also asked if the population figure has been settled and if the City now has an acceptable population figure the Land Use Board of Appeals (LUBA) agrees to. Staff stated LUBA desires for the County to adopt the numbers into their comprehensive plan; the County is still in the process of coordinating this. Councilor McKinney asked if all the stakeholders are in a general agreement on the method or formula for the population figure or are we looking to future arguments. Staff stated there have been a number of conversations with the County and the State to come to an agreement; it is still up in the air until the County completes a formal adoption.

Councilor Shelton asked if the County has an agenda or timeline set to bring this in as part of their plan. Staff said once the Council adopts this then it must also be adopted by the County Commissioners, hopefully in the next couple of months.

Mayor Andrews asked of the land in the UGB, how much is currently in production and what is being produced, how does this compare to what might be predicted to be produced in terms of jobs if it is developed as industrial land. Staff replied the number of jobs created as industrial development will be in excess of 100 times the jobs under agricultural production.

Mayor Andrews opened the public testimony starting with the proponents.

Mr. Sam Farmer stated he served as chair of the ad-hoc committee that submitted the report on the UGB issue in 2006 and there are still some of the same concerns. He is representing that committee in terms of the current businesses in town who wish to find buildable land and there is nothing available to them or any new businesses coming to town. He is concerned the five years of discussions have already gone on too long. He said if Newberg is going to grow and look to the future it must have buildable industrial land and it needs to be available today regardless if building is taking place now or years from now, because businesses will not consider Newberg. He urged Council to consider this for Newberg's future industry.

Ms. Cathy Stuhr said she is another member present tonight that was on the ad-hoc committee in 2006. She has lived in Newberg for nine years and spent the majority of that time helping the City to work towards the future. She spoke of voting against something for affordable housing that came before the Planning Commission (PC) because she was looking at the facts and they did not fit or make sense, even though so much hard work had been put into it. She has been opposed to development on farmland ahead of time and before infrastructure is in place; but, she is here to support this because it makes sense based on the staff report, there has been a lot of public participation, the City has demonstrated a need for this future planning, and having this land ready and available. She is also against explosive growth, which concerns many, but looking at the economy it may not happen but these plans need to be embraced and we need to prepare for when the growth comes. She felt the City has responded to the public comments and LUBA and came back to revise the documents; the City is vetted in the process. Wherever industry is going to go it cannot be on a mountainside or too far from transportation. In respect to the ad-hoc committee, they looked long and hard at this and went with a medium growth rate because the plan cannot keep changing. She felt arguing over the population projections was just a technicality, but she felt this was good for the City.

Ms. Julie Fugate said she has lived in Newberg for nine years and is also representing Connie Gray, who lives on St. Paul Hwy; both are affected by this matter. She spoke of her adult children, both working in Portland because there are no jobs here for them. She said this is a way to build for the future of Newberg's children to grow up and get a job here without commuting elsewhere for family wage jobs. She said the process staff went through to evaluate all options was comprehensive, measured and logical; and this makes sense with great

access to I-5 and other roads. She said her friend Connie lives there and is also affected; there is not a lot of agriculture production other than grass seed and a small filbert orchard. Connie also has a filbert orchard on her property, but they are both in support of this and they feel it makes sense to live and work and be able to stay in the area.

Mr. Mike Gougler stated he supports the amendment and has worked in land development and general development for sixteen years and worked with many companies that desired to locate manufacturing facilities here. He said he knows how much time and money it takes for any one with a parcel of land already zoned for industrial to develop it. Newberg land use laws are the hallmark of local government innovation in the U.S. and on a positive side prevent sprawl and establish orderly expansion of residential/urban areas; but, it also has a downside because it allows contraction or restriction of expansion when the economy demands it without having to prove negative. He said this is a well-developed document and deserves serious consideration. He felt staff has gone well beyond what is required to prove the argument and the City desperately needs a comprehensive plan including opportunities for industrial development. The City has no other place for it and he urged the Council to support this.

Mayor Andrews opened the floor to the opponents.

Ms. Corinne Waterbury stated she lives just outside of the Newberg city limits on Old Parrot Mountain Road. A lot has been said about the 2005 and 2006 document for the next twenty years but it did not project the housing crash. She said she understands it is only a guess, but we also have to react to how things are now. Some of the assumptions from six years ago are not true now. She hoped everyone has read the 1,000 Friends of Oregon document because it is excellent and has good points and philosophy behind it. We are not making any more farmland, which is much more valuable; she referred to an article discussing farmland value and rising food prices. She said the idea that farmland is not valuable or a source of jobs will not be true in the future and she is opposed to taking good farmland and turning into industrial land that may not be used now but may be in future; if the farmland is removed forever, then we need to think about it. She referred to another article from The Oregonian about the economic development for golf courses and bike trails rather than industry from U.S. Department of Agriculture saying Newberg already has that. She did not think Newberg should rush to do this and said it is all the more compelling to look at the plan and decide what kind of place we want Newberg to be because we say we want tourism and industry but we cannot have everything.

Mr. Lewis H. Schaad said it is good flat land for industrial use, but he is concerned with losing farmland. He also referred to an article in The Oregonian about growing food close to home and said although grass seed is not an edible crop, the potential is there to have one. He said the same crop land is used for trees and ornamentals for urban environments. He farms forty some acres on Quarry Road and looking around at things he does not see any prunes on the trees this year and there is no market for it; the apples are scattered and there are some Asian pears; but, a couple orchards do not have any. He said they are playing Russian roulette with the weather which is not conducive to getting the crops in the ground in time lately. He said the major question for this land as industrial zoning is the economic level of proposed employees going to be able to find housing here in Newberg. As he understands, the City is already having difficulty getting affordable housing and there is already increased traffic issues on Fernwood Road and Corral Creek at Hwy 99W.

Mr. Lee Does stated he is a ten year resident and frequent participated in this process. He has a vested interest in good, viable farmland and although he is not shopping for land he brought out a camera and found a plethora of lands that are just not selling and it will take years for this to catch up. He said he accepts Newberg is determined to grow and will occupy all usable farmland from here to river at some point, but he believes this is not the time for such expansion. In regards to the current UGB proposal he felt the City is continuing to "cherry pick" from outdated data. He spoke of being in a serious recession and unemployment going up to 10%; he would like to see change tonight but the decision being made tonight will not change what is done in Newberg tomorrow. He said every site he looked at was within less than five minutes of I-5 and closer to Portland or within sight of a rail line. He spoke of Newberg's difficulty to have ready acres, the supply of employees and

similar vacancies. He said we are definitely in a buyers' market for land and will be at a serious disadvantage if we are banking on industrial land. He also mentioned the transportation factor to not being able to get to Portland faster. He spoke of other vacant buildings like the Suntron building having enough square footage to move into today. Oregon is in a recession that will take some eight to ten years to get out of, which means refilling empty lands. He ended by commenting on agricultural production and state land laws not encouraging that kind of thinking; he said to look at the land for one person's life and what is in the bank now for years.

Mr. Sid Friedman, representing 1000 Friends of Oregon, Friends of Yamhill County, and himself as a thirty year resident of Yamhill County, said he served two terms on Newberg Urban Area Management Commission (NUAMC) and a couple on the Yamhill County Planning Commission. He said real economic development is based on real facts and not what this proposal is about. The largest component of land is to be added to the UGB for industrial development and although every trend says manufacturing will grow slowly or decline, Newberg says it will grow. He felt Newberg should focus on the assets and businesses that will realistically grow here like wine, healthcare, tourism, higher education, and agriculture, both in and out of the UGB. He spoke of the two hundred and sixty acres of mostly prime agricultural land being used for sports apparel and silicone production and risking losing what we have and chasing what we are not likely to get. He said staff has spent years justifying reverse engineering and although fixes have been made they still manage to need an amount of employment land and applies a much faster growth rate than Newberg has experienced over the last thirty years. He said they have revised site characteristics for industrial need, but he did not agree with the idea that all industrial development in the new area is at least one hundred acres in size of identical acreage and location and those needing less do not need to locate there. He said he strenuously disagrees and as petition is up for review before the Supreme Court he discouraged the Council to push forward with this before the decision is made by the Supreme Court because it wastes time. The 1,000 Friends of Oregon supported other recent cities like Cottage Grove that only took nine months from start to finish, Amity took four months, and others like Junction City, Eugene, Keizer, and Springfield. He said not all cities have delays, only cities with overreached conclusions they keep trying to justify.

Councilor Shelton asked what the availability of exception lands in Newberg is. Mr. Friedman said Newberg is entirely surrounded by vacant acreage in the Urban Reserve Area (URA) and many relatively flat and other exception land not in the URA adjacent to that; he said this only area of farmland adjacent to Newberg is unique.

Councilor Ryan Howard said Mr. Friedman accepted that Newberg is in need of more industrial land. He replied he could make a case for less. Councilor Howard continued about having incentive to bring in more land and although this can sometimes lead to sprawl it can sometimes lead to wise expansion. He asked what considerations need to be taken when it is not so apparent from their mandate to do what is best for the people. Mr. Friedman said the City, County, LCDC, and 1,000 Friends of Oregon all have different responsibilities; the City goes towards the City's primary thoughts, but not necessarily other entities. He said to look at a projection that is reasonable for the next ten to twenty years and the State forecast for manufacturing and take those as guidelines rather than saying we are going to do it because an ad hoc committee said so eight years ago.

Councilor Howard spoke of him taking issue with the population projections. He asked what other points of the comprehensive plan he has issue with since a lot are procedural; he wanted to know what are his other substantive concerns. Mr. Friedman said the population projections issue is with the rate of employment growth projections, especially in manufacturing reverse engineering. The issue is with the amount of land to housing and the amount of employment staff says they will get even if they get it. They are using land less efficiently and in lower density than other comparable cities. He spoke of exceptions with the size of sites needed and Newberg's determination of retail land needs being one hundred gross new buildable lands for roughly one thousand new jobs.

Councilor Howard stated a lot of the land in consideration is under utilized at this point. Mr. Friedman disagreed that it is mostly out of production saying people have disinvested because they are planning to be brought into the UGB.

Councilor Shelton asked if he did not agree with reestablishing the baseline to 2010 since up to then they have been spot on with projections, and they will adjust and project out from 2010. Mr. Friedman said his testimony was misunderstood because he does not object to 2010 as the baseline and thinks it should be, but do not apply to that base a growth rate already proven to be wrong. He said they had years that were accurate and inaccurate and over the length it has been quite wrong. He spoke of netting out migration and lost population, but growing next year by 2.3%; he said it just does not seem to make sense.

Councilor Shelton asked what the figures were bringing in acreage-wise. Mr. Friedman said the city is in two hundred and sixty acres total of which only one hundred and thirty-two is buildable. A year ago at the end of the day you will bring in twenty acre parcels so it is ready and available, but every acre will be building from here to the river. Councilor Shelton did not know if that was accurate. Mr. Friedman said it is mostly unbuildable land across Hwy 219; Councilor Shelton said that makes sense.

Councilor McKinney said there are people that disagree with the last comment but he added Mr. Friedman has some good comments and points and he appreciates his testimony. He realizes Mr. Friedman has different jumping off points than what the City has and asked what the points of agreement between the vested parties are. He said they are meeting their responsibilities to the citizens and asked if there were any points of the synopsis where we are in agreement. He asked if there was a way to create a forum of where we agree because he does not want to commit to the number of acres, but moving away from the number should create movement ahead. Mr. Friedman said they agree with three quarters of the targeted industries, with healthcare, higher education, and some of the industrial; but, they disagree the manufacturing section will grow at the rate the Economic Opportunities Analysis (EOA) projects. As far as creating a forum, he replied he and others met with city staff a year ago or less and tried to see if they were willing to make significant changes, staff said there would only be minor tweaks, not significant changes because it is what the ad-hoc committee recommended. Mr. Friedman said it takes two parties to compromise.

Councilor Shelton asked what the perspective was as to how UGBs are developed. Mr. Friedman said according to adjacency to the UGB and any land existing in the industrial zone or district of at least one hundred acres. Councilor Shelton responded that in order to expose those one hundred and thirty-two acres it will require bringing in more land because of the adjacency. Mr. Friedman said they do not accept that number as the acreage size of need. Councilor Shelton wondered if there was any plan that does not have portions which are unbuildable. Mr. Friedman said he is looking at it from the City's side, but a lot of unbuildable land is farmable and he discounts the size of the actual expansion.

Mayor Andrews closed the public testimony portion of the hearing. No deliberations were held. The record remained open to accept written testimony for the next seven days for Council deliberations to be held on June 20, 2011. Mayor Andrews recessed briefly.

2. Consider a motion approving **Resolution No. 2011-2953** adopting the 2011-2012 Budget and including election to participate in the State Revenue sharing Program.

TIME – 8:52 PM

Ms. Nordyke presented the staff report with corrections to the information given in the Council packet; she stated the budget was published with the correct numbers (see official meeting packet for full report).

Mr. Terrence Mahr, City Attorney, added since the budget was originally published correctly, he did not see any problems with the revisions.

Councilor Shelton asked about the ten percent figure for amending the budget and the latitude council has. Staff replied they have the authority to reduce by any amount, but to increase expenses or appropriations by more than ten percent means it must go again to the Budget Committee.

Councilor Shelton said he was concerned with what he heard from a citizen member of the Budget Committee about the contingency for the general fund. He asked if Council wants to increase the contingency it would require another line out of general fund to be reduced to transfer. Staff stated this was correct but contingencies are included for total appropriation and if they want to increase and decrease another line item it is not subject to any rules because the net effect is zero.

Councilor Shelton asked if they were anticipating the Transient Lodging Tax (TLT) to increase and if there are any projections for that to come into a supplemental budget during 2011-2012. Staff said they looked at previous hotels before The Allison and they actually reduced in revenue, yet The Allison increased. She recommended waiting until the year end reports are done to have an accurate figure for the contingency; if it is less or more than estimated at that point it can be decided to increase the contingency. Councilor Shelton asked when this report and supplemental budget will be taking place. Staff replied they get the 3rd quarter TLT at the end of October; they can compare it and decide then.

Mayor Andrews opened and closed the public testimony as no citizens appeared to testify. Staff recommended adopting the resolution as revised. The public hearing was closed.

MOTION: Shelton/McKinney approving **Resolution No. 2011-2953** adopting the 2011-2012 Budget as revised and including election to participate in the State Revenue sharing Program. (7 Yes/0 No) Motion carried.

3. Consider a motion approving **Ordinance No. 2011-2739** expanding the Old Fashioned Festival Zone to include area around Chehalem Cultural Center and clarifying the rules.

TIME – 9:09 PM

Mr. Brierley presented the staff report continuing the hearing and using a PowerPoint as a visual aide (see official meeting packet for full report).

Mayor Andrews asked for any conflicts or interest or abstentions; none appeared. He opened and closed the public testimony as no citizens appeared to testify.

Councilor Howard expressed uncertainty with the changes and not having a representative from the Cultural Center present and asked if they have worked with them on this. Staff replied they have been included in these changes and what the ordinance would do is not allow temporary merchants or street vendors to operate next to the Cultural Center that are not associated with the Old Fashioned Festival (OFF). Councilor Howard continued by asking how this affects vendors licensed to sell on their property. Staff said they are allowed to run the Cultural Center and there are variables for sales associated with the Center, but they cannot rent space out to a temporary merchant.

Mayor Andrews asked where it says that in the document. Staff replied it does not but is related to other ordinances regarding this; you cannot license someone to sell something unrelated to the Cultural Center.

Mayor Andrews asked about the OFF Committee and if it is a function of the City or operating independently. Mr. Mahr spoke of previous discussions of the committee operating under the City's umbrella for protection of the volunteers; however, the chair of the committee said they have set up an independent organization and their own insurance and he is comfortable they are an independent nonprofit corporation and they are protected. The Cultural Center participates as a member of this association.

Mayor Andrews asked why we are going as far east as Meridian Street for this district. Staff replied because the parade route extends there and they wish to encompass the entire parade route and for simplicity it will be for the entire time of the festival rather than just during the parade.

Councilor Wade Witherspoon spoke of this being to reduce competition with the vendors in the park as well and if there are plans for alcohol tasting or sales at the Cultural Center. Staff replied there has been talk about doing a beer tasting there.

Councilor McKinney asked if there is wine and beer allowed at the park. Staff replied that alcohol is prohibited in Memorial Park and no alcohol will be sold south of Hancock Street.

Mayor Andrews opened and closed the public testimony as no citizens appeared. Staff recommended passing the ordinance as presented. Mayor Andrews closed the public hearing.

Councilor Shelton referred to page 699 of the packet and said he agreed with the first and third limitations but had difficulty with the second because he believed it overextends the City in regards to enforcement. He felt it should be revised to be just during the times of the parade on Saturday morning to not overreach the intent of this ordinance. He said the rationale was set out to protect Memorial Park and this is moving into neighborhoods not contiguous to the park. He had a hard time reaching beyond memorial park.

MOTION: Rierson/McKinney approving Ordinance No. 2011-2739 expanding the Old Fashioned Festival Zone to include area around Chehalem Cultural Center and clarifying the rules, read by title only.

Mayor Andrews said he also agreed with Councilor Shelton regarding the second item; the intent was to cover the parade route. He said he can tolerate the first item, but he prefers only the expanded boundary for just the parade hours. He said he could not approve this with the second item or to include the Cultural Center only for the duration of the parade he would be fine.

Councilor McKinney argued not including the Cultural Center did not make sense and for all the efforts already taken place to date. He felt it would be counterproductive to what others have invested so far to make this a success and recommended pursuing the ordinance as written because it could do serious damage to the festival if they do not follow through.

Councilor Howard said he was in favor of extending the zone to the Cultural Center, not just to include it into the OFF, but extending the OFF to the Cultural Center brings people out of the park and into the downtown for a more inclusive event.

Councilor Denise Bacon said she was opposed to having a zone telling businesses they have to cooperate with the OFF to be a part of the celebration regardless of their own business plan. Councilor Howard argued many of those businesses were already in the zone so the damage is already done.

Councilor Shelton said he agreed with including the downtown core but they are not being included. The City is making an ordinance regulating the Cultural Center and if the perception is that the OFF does not serve alcohol the reality is that it does if the Cultural Center is inside of this zone serving alcohol.

Mayor Andrews stated discussions with downtown merchants have revealed they have little or no business during the OFF. Councilor Howard said that confirms what he believes about making the Cultural Center part of OFF to draw people from memorial park through the downtown for more local business traffic. Mayor Andrews added if they leave it as it is and the Cultural Center has events then people will travel through downtown to get there anyway.

Councilor McKinney felt the Council would be sending the wrong signal to all those who have worked so hard to change attitudes about downtown and the efforts of the OFF Committee.

Councilor Bacon said she will not regulate what they are doing to be successful.

Councilor Rierson said the Newberg Downtown Coalition (NDC), the Cultural Center, and all of the OFF Committee supports this request for action and he thinks the Council should endorse the idea of it not just being at Memorial Park but as more of a city festival. Councilors Howard and McKinney agreed.

VOTE: To approve **Ordinance No. 2011-2739** expanding the Old Fashioned Festival Zone to include area around Chehalem Cultural Center and clarifying the rules, read by title only. (4 Yes [Howard, McKinney, Rierson, Witherspoon]/3 No [Andrews, Bacon, Shelton]) Motion carried.

VIII. COUNCIL BUSINESS

TIME – 9:47 PM

Mr. Danicic discussed various options for reducing the hours of operation at City Hall in order to account for budget cuts while still maintaining front counter coverage. This included the use of automated telephone systems to increase staff efficiency. Discussions followed with the Council's concerns and preferences. They did not wish to see City Hall closed for an entire day, but preferred a more flexible split schedule opening earlier on some days and closing late on others. They also were hesitant about using an automated telephone system because it removes the desire to have citizens speak to a "live" body; but, they seemed to agree it could be allowed if there were only one or two options before they were routed to a live person rather than having a complicated system to go through.

Councilor McKinney asked about franchise fee increases and when they will be coming. Mr. Danicic said it will not currently be implemented as it is requested for Council to look at it holistically; it will be implemented in stages.

Councilor Shelton suggested convening the Budget Committee again and that being a good time to discuss the TLT, business license fees, and all of these items together.

IX. ADJOURNMENT

The meeting adjourned at 10:35 PM.

ADOPTED by the Newberg City Council this 1st day of August, 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 4th day of August, 2011.

Bob Andrews, Mayor

**CITY OF NEWBERG CITY COUNCIL MINUTES
JUNE 20, 2011
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

A work session was held prior to the meeting. A presentation on the Visitor Center business plan was given. No action was taken and no decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:00 PM.

II. ROLL CALL

Members

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

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Barton Brierley, Planning and Building Director	Eric Ronning, Police Detective
	Janelle Nordyke, Finance Director	Norma I. Alley, City Recorder
	David Beam, Economic Development Coordinator	Jennifer Nelson, Minutes Recorder

Others

Present: Sgt. John Goad and Sid Friedman

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, reported on the success of Public Works Day at the Library with six hundred plus visitors. He gave an update on the problems with the microphones; they are still working on the issues and are awaiting a delivery date for new ones. The Library will kick off its summer reading program this Wednesday at 1:00 PM and the fire department will hold a burn-to-learn event on Thursday at 6:30 PM on Terrance Drive. The City's annual water report was also distributed last week.

Mayor Andrews followed the city manager's report with the reading of a proclamation and presentation to Sgt. John Goad in recognition of his retirement and over 25 years of service to the City of Newberg.

V. COUNCIL APPOINTMENTS

Consider appointing Kathleen Jones and Cody Ridenour to the Newberg Library Board.

TIME – 7:09 PM

MOTION: Rierson/Bacon approving the Mayor's appointment of Kathleen Jones to position#1 and Cody Ridenour for position #5 to the Newberg Library Board. (7 Yes/0 No) Motion carried.

VI. PUBLIC COMMENTS

None.

VII. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2011-2954** approving an amendment to the Fire Collective Bargaining Agreement.

This item was pulled from the Consent Calendar and considered under New Business.

2. Consider a motion approving a sound permit for Newberg Friends Church for an event on July 10, 2011.
3. Consider a motion approving City Council Minutes for April 18, 2011, May 2, 2011, and May 16, 2011.

MOTION: McKinney/Rierson approving the Consent Calendar including a sound permit for Newberg Friends Church and the City Council Minutes for April 18, 2011, May 2, 2011, and May 16, 2011. (7 Yes/0 No) Motion carried.

VIII. PUBLIC HEARINGS

1. Consider a motion approving **Order No. 2011-0031** affirming the Planning Commission's decision to approve a partition and variance for a property located at 803 E. Ninth Street.

TIME – 7:12 PM

Mayor Andrews called for any abstentions, biases, conflicts of jurisdiction, or ex-parte contact from the Council; none appeared.

Councilor Denise Bacon stated she serves on the Habitat for Humanity Board and she is also on the committee that brought this forth.

Mayor Andrews stated an individual contacted him about where this was located after the Planning Commission hearing; there were no discussions and his decisions will be based on the record.

Mr. Terrence Mahr, City Attorney, asked Councilor Bacon about her position on the Habitat for Humanity Board and if it is a non-paying position. Councilor Bacon replied she does not get paid and after this was appealed she did leave the board meetings whenever this topic was to be discussed. Mr. Mahr stated a volunteer position does not rise to be a conflict requiring for her to abstain.

Mr. Mahr made the required legal statements in quasi-judicial matters and explained the procedure for testimony. He proceeded to explain this item was heard by the Planning Commission and appealed. There is a one hundred and twenty day time period for the Council to make a decision, making the deadline June 28, 2011, otherwise the applicant can go to court and order the City to approve the application if no decision is made by then.

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

Councilor Marc Shelton asked if there was someone living in the dwelling. Staff replied for about a year.

Mayor Andrews asked about the proposed plan and parking spaces. Staff said the configuration is not approved; they required ninety degree parking and to dedicate four feet to reconfigure the site plan to

accommodate that. Mayor Andrews asked if it is still paved at twelve feet at the top of the plan. Staff replied it is and the parking will be paved with enough room for ninety degree parking.

Councilor Wade Witherspoon asked about signage, one way access in the plan, and the ability of cars to pass in the alley. Staff replied there are no parking fire lane signs along the alley but there is no requirement to post speed limit signs; the Planning Commission discussed the merits and issues of the one way and there was a motion that failed, but two cars can pass in the majority of the alley it is just the one section that is difficult.

Mr. Danicic added the low traffic volume will only have conflicts on an occasional basis and they rely on the nature of one individual stopping to allow another to pass; he did not see this as an issue.

Councilor Stephen McKinney asked if there was any anticipation of the neighbors to the east and west creating parking spaces in their back yards. Staff said they could and there is availability to use the alley for garage access; but, there will not be parking allowed in the alley although it is not signed. Councilor McKinney asked if the dwelling will be reduced in size to accommodate the ninety degree parking. Staff replied the occupants are constructing a small dwelling. Councilor McKinney asked about the difficulty of expanding the twenty foot section of the alley farther or widening the twelve foot section to the east. Staff said there would be difficulty with expanding although there is a little room.

Councilor Ryan Howard spoke of concerns from individuals with service trucks passing through where they otherwise would not; he asked if mail and garbage deliveries will be made that are currently not there. Staff replied they spoke with the post office and the garbage company and they indicated they would not be using the alley, but other service vehicles may use it with moving in or out. Councilor Howard asked if there would be room for pedestrians for services rendered at the south street and if residents would be allowed to walk next to this. Staff replied there is a five foot setback on each side to allow for walking.

Councilor McKinney spoke about the neighbors on the east and west and further development along the alley and asked how many more properties may develop dwellings adjacent to the alley. Staff said there are a number with backyards to the alley and there is the possibility for additional homes to access it in a similar manner. The applicant talked to neighbors throughout the process and we have not heard anyone that would do that, but some may over time. Rules recently adopted by the City Council allow the use of an alley for access up to six dwellings so there is a potential for five additional ones.

Councilor Howard asked what the requirement was for the width of the alley. Staff replied the standard is twenty feet so this requires a variance.

Mayor Andrews asked if they have to have a right-of-way of twenty feet even though it is paved at twelve feet. Staff said it is not needed but to be twenty feet, right-of-way would need to be purchased.

Staff recommended denying the appeal.

Councilor McKinney asked if the dwellings at Meridian Street prevent a twenty foot alley there. Staff discussed the possibilities, saying it is impractical to require that but not impossible. Discussions followed the twelve foot versus the twenty foot sections in terms of paving and easements.

Councilor Bacon asked staff what his thoughts were on the matter. Mr. Brierley stated they need emergency access to the site and twenty feet is what the fire department requires, once they have that then it is not required all the way through.

Mayor Andrews closed the public hearing.

MOTION: Rierson/Shelton approving **Order No. 2011-0031** affirming the Planning Commission's decision to approve a partition and variance for a property located at 803 E. Ninth Street.

Councilor Wade Witherspoon said he was in favor of denying the appeal, but he would like to see this as a one way for potential for issues.

Councilor Bacon disagreed with having to pave the twelve foot section because people want to use the area and they are trying to concentrate traffic with the main access on the twenty foot side and pavement also causes drainage problems that we would be adding too.

Councilor Shelton asked if there would be a paving issue if you have continuous paving from the twenty to twelve foot section or does it actually improve drainage by getting it to go where we want it to go. Staff said anytime something is paved it keeps water from going into the ground and it has to be directed somewhere. This can be resolved with engineering design, although it is more impervious it also allows the ability to channel the runoff; gravel does not allow the water to be directed. Councilor Shelton continued by saying he agreed with the city manager that parking on both sides does mitigate speeding and some of the parking was occurring by the residents even though it is illegal; he did not see paving as much of an issue.

Councilor Howard spoke of conditions being put on the applicant serving to make the alley nicer and to alleviate the concerns of other residents, but when looking at granting the variance this should only be in ideal circumstances. He asked the city attorney if they are looking at this based on the record itself or on the Planning Commission's approval of the variance with deference to their findings. Mr. Mahr said to look at the entire record not to show error in the findings. Councilor Howard said it would be great to allow this but it is not ideal and wondered if the benefits the alley will receive from the improvements justify the variance; he said he is on the fence about the matter.

Mayor Andrews said he appreciates Councilor Witherspoon's concerns; however, time might tell one thing or it may reinforce concern. He spoke of the narrow travel issues and paving and if this should still be a one way. He suggested this could be brought to the Traffic Safety Commission (TSC) for future reference so action is not needed tonight but if a problem is demonstrated it could go to the TSC.

Councilor McKinney said he sides with the Planning Commission and spoke of opening a door to a variance request that does not meet low and high bars. The transition from twenty feet to twelve creates a big problem in his mind and he could be compelled to go to a one way with paving to control the runoff. The Planning Commission chair sees a problem with this departing from our new rules, not the old one and he said he is inclined to support the appellant in this case. He agrees with Council Howard it is worthy of granting an exception even to the new rules we set and even the Planning Commission saw problems on this at their level. He said it was still one more ill-advised patchwork situation that we have a lot of in the city.

Mayor Andrews asked if there are any other areas in the city where access to a residence is by an alley. Staff replied there were and referred to packet page seventy-five for photos.

Councilor Howard asked if this is denied does that action accept and allow the appeal. Staff said the motion on the table would adopt the order which would approve the partition and uphold the Planning Commission decision. If they wish to deny the partition and reverse the Planning Commission's decision, then a different motion and order would be required and that would be the end of the appeal unless it moved onto the State Land Use Board of Appeals (LUBA).

VOTE: Approving Order No. 2011-0031 affirming the Planning Commission's decision to approve a partition and variance for a property located at 803 E. Ninth Street. (5 Yes/2 No [Howard, McKinney]) Motion carried.

Mayor Andrews recessed at 8:03 PM for seven minutes.

2. Consider a motion approving **Ordinance No. 2011-2735** establishing provisions for second-hand dealers.

TIME – 8:10 PM

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

Mr. Mahr and Detective Eric Ronning presented the staff report (see official meeting packet for full report).

Mayor Andrews asked about the fiscal impact costs to the police department to monitor this. Staff said there were minimal costs for staff time and administrative costs.

Detective Ronning spoke of a computer database costing about \$649.00 per year for unlimited use and it is beneficial whether the ordinance is in place or not because of the ability to search other cities in the system. Prior to the database, the additional time for staff was significant, but now the only staff is the detectives and the records system, if anything, there has been a decrease in the amount of time with this system.

Mayor Andrews spoke of this being held off because of something in the County Sheriff's Office and asked if this activity has been reconciled in the efforts to coordinate. Staff said they spoke with the individuals helping to create the ordinance and the use of the system in Newberg. The County is waiting to see what happens on the city levels. Mayor Andrews also asked about the definition of a pawn shop. Mr. Mahr referred to the State laws for definitions stating it is not in this ordinance because the Oregon Revised Statutes (ORS) governs this and the intent of this ordinance is not to regulate pawn dealers but second-hand dealers that buy property for resale. Detective Ronning added the definition of a dealer and second-hand is covered on page two of the ordinance or page 214 of the Council packet.

Councilor Shelton said he was comfortable with the second-hand term being in the title and the definition, but it is not lining up by mentioning the word "pawn" in their document and spoke of pulling all references out of the ordinance.

Mayor Andrews referred to page 221 of the packet regarding holding periods, asking if this refers just to the records, merchandise or both. Staff said it is to the merchandise itself, the records are held for one year at least.

Councilor Howard spoke of other holding periods. Staff said they are running no less than fifteen days to have a balance between accommodating someone with property stolen while on vacation and the need for the business to make a sale. Councilor Howard asked if this was to mainly allow time for someone to file a report, not time for the police to review the reports. Staff said it is intended for those who may have had property stolen.

Councilor Bart Rierson asked if they are talking about specific second-hand stores like the one on Hwy 99W or other shops that buy and sell used or consigned items like the Habitat Restore or thrift shops. Staff said it is not specifically for one store and donated items do not qualify, he cited other stores that may qualify like Ken & Daughter Jewelers and Game Stop.

Councilor Howard asked if there were complaints or reasons that brought about the interest in this ordinance. Detective Ronning said he looked at this when he realized a pawn dealership was coming to town and Newberg did not have anything like this.

Mayor Andrews opened and closed the public testimony as no citizens appeared to testify. Staff restated the intent of the ordinance and read the title striking the word pawn shops and clarifying the references to ORS recommending adoption with the change in the ordinance title from 2010 to 2011.

Mayor Andrews closed the public hearing.

MOTION: Shelton/Rierson approving **Ordinance No. 2011-2735** establishing provisions for second-hand dealers by title only and with corrections. (7 Yes/0 No) Motion carried.

3. Consider a motion approving **Ordinance No. 2011-2741** amending the Newberg Municipal Code regarding the use of alcohol, smoking, sales, and distribution of materials in public places; and approve **Resolution No. 2011-2955** revising city policy regarding temporary vendor sales permitting and rules in public places.

TIME – 8:52 PM

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

Mr. David Beam, Economic Development Coordinator, presented the staff report including a PowerPoint slideshow (see official meeting packet for full report). Staff recommended no changes at this time.

Discussions followed about smoking prohibitions in addition to the State prohibitions on public and private establishments, repealing possession and concentrating on consumption of intoxicants, defining intoxicants, permits for temporary sales being subject to city manager approval, deleting the section on literature because of issues with freedom of speech, the effective dates of the ordinance being thirty days from passage versus the resolution going into effect immediately on June 21, 2011, rather than July 20, 2011, and the allowance of commercial vendors to sell in the public right of way of which Francis Square is not.

Councilor Howard asked what criteria the city manager would use to grant or deny permission to distribute alcoholic beverages. Staff said they would need to show proof of an Oregon Liquor Control Commission (OLCC) license.

Mayor Andrews asked for clarification of who has jurisdiction on parks. Staff replied there are two entities, the City and the Chehalem Park and Recreation District (CPRD); the gazebo and Francis Square are controlled by the City and Memorial Park is owned by the City but operated by CPRD. If CPRD owns the park, the City has no jurisdiction and Memorial Park would need city manager approval because the City owns it.

Mayor Andrews asked if alcohol or intoxicants are allowed in CPRD parks and if this includes ball fields, athletic fields, or the park at the Cultural Center. Staff replied if it is called a park then this applies, but the Cultural Center is not labeled as a park.

Mayor Andrews asked about any request for permission from the city manager for alcohol consumption and if they are mainly looking at the OLCC license is there anything to consider the presence of minors. Staff replied this would be covered by the OLCC license and areas are typically roped off and monitors are present.

Mayor Andrews referred to page 225 and asked if public places include sidewalks because many citizens have complained about smoking in front of business entrances downtown. He asked what is considered the entrance to a sidewalk. Staff said State rules specifically talk about enclosed public spaces and a sidewalk is not enclosed; they are not banning that here. Mayor Andrews continued by speaking of needed wordsmithing in the first sentence on page 226. He also spoke of distributing handbills and retaining that no person shall throw or deposit any even though a littering ordinance is in place.

Mayor Andrews opened and closed public testimony as no citizens appeared to testify. The public hearing was closed and staff summarized the recommendations.

Councilor Rierson disagreed with the Mayor on the matter of littering.

MOTION: Rierson/Howard approving **Ordinance No. 2011-2741** amending the Newberg Municipal Code regarding the use of alcohol, smoking, sales, and distribution of materials in public places.

MOTION: Andrews/Shelton amending **Ordinance No. 2011-2741** to retain the language “no person shall” and delete the remainder which does not interfere with the First Amendment rights.

Mr. Beam also suggested cleaning up the title and adding the words “and non commercial”.

Councilor Shelton said he would consider adding the second amendment but also changing the title away from “distributing” and just use the language “throwing or depositing handbills in public spaces”.

MOTION: Andrews/Shelton amending **Ordinance No. 2011-2741**. (3 Yes [Andrews, Shelton, Witherspoon]/4 No [Bacon, Howard, McKinney, Rierson) Motion failed.

Councilor Shelton said he cannot support this ordinance because it is saying for the first time it is okay to drink in open public places when children can be present. What was approved at the library is enclosed and after hours, not out in public. He said CPRD has been good neighbors using the library for functions but he does not think it is appropriate to use that park for alcoholic consumption.

Councilor Rierson stated he may have been swayed by Councilor Shelton’s comments, but he does like the language repealing the handbills. He wished this could be taken in pieces.

Councilor Howard said he did not have the same problem with exposing minors to adults consuming alcohol and argued it may even be healthy to see adults consuming in a responsible manner.

Councilor McKinney said there has been a long tradition of prohibiting alcohol consumption in Newberg and he would have to answer to a lot of people if he voted for this. He gave his compliments to staff for the work done on this but said he still cannot support it.

Councilor Shelton said he could agree to support the second and third ordains with the amendment.

Councilors Rierson and Howard withdrew their motion to approve the ordinance.

MOTION: Shelton/Rierson adopting **Ordinance No. 2011-2741** read by title only with suggested amendments to remove ordination number one; changing the title regarding drinking and consumption and sale of liquor to an ordinance amending the Newberg Municipal Code regarding vendor sales and the distribution of handbills in public places as well as defining the term intoxicant; the second ordains changes from “supporting the economy by the wine industry” to “the city desires to maintain a clean environment and protect the rights of free speech”; and recitals #2 and #3 become #1 and #2 respectively with the omission of recital #1; and addressing the effective date to thirty days from adoption so the resolution does not depend on the ordinance. (7 Yes/0 No) Motion carried.

Mayor Andrews opened the public hearing on **Resolution No. 2011-2955** revising city policy regarding temporary vendor sales permitting and rules in public places. He called for any conflicts of interest or abstentions; none appeared. He opened and closed the public testimony as no citizens appeared to testify.

Discussions followed regarding changes needed in the resolution based on the amendments made to the ordinance to delete the first resolve dealing with alcohol consumption and modifying the others referring to the sale and consumption of alcohol.

Councilor Witherspoon wondered if some things should be left in for the Library and Cultural Center. Mr. Danicic said there is already a set of rules for the Library.

Councilor Shelton spoke of revisions to the language on #3 for Francis Square and the Memorial Gazebo and asked what the purpose of removing intoxicants and illegal drugs is when efforts were made to define intoxicants in the code. Staff replied not all intoxicants are necessarily illegal because of prescription drugs. Councilor Shelton said this is already in the criminal code and does not need to be stated and suggested striking all of that line. Mr. Mahr said this may be the way to go; however, in striking there is a possibility of wine or alcoholic beverages in Francis Square, it may be important to mention intoxicants and alcoholic beverages.

Councilor Howard asked if that would include tobacco. He is in favor of striking the whole line as it is redundant and the possession or use of illegal drugs is already prohibited in parks.

Discussions followed about the best way to modify bullet #3 and which words to eliminate or retain. Staff said the intent is to prevent poor behavior and disturbances. They determined to delete #1; take out “typically” in #3; delete the fifth and sixth bullet; delete “without written permission”; change to recitals in #2 adding a period and delete change property to public; on page 231 strike “such as the tourism/wine industry”; strike change numbers without the written permission of the city manager; and change the title by striking alcoholic and liquor city polices regarding sales in Francis Square.

Mayor Andrews closed the public hearing.

MOTION: Witherspoon/Rierson approving **Resolution No. 2011-2955** revising city policy regarding temporary vendor sales permitting and rules in public places as amended. (7 Yes/0 No) Motion carried.

Mayor Andrews recessed at 10:17 PM for five minutes.

IX. CONTINUED BUSINESS

Consider a motion approving **Ordinance No. 2011-2740** amending the Urban Growth Boundary, revising the Economic Opportunities Analysis, amending the Comprehensive Plan Map and text, and amending the Transportation System Plan.

TIME – 10:22 PM

Mayor Andrews said this ordinance is open for deliberations only; the written record was closed after it was left open for five days from the previous meeting.

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

There was discussion about the additional written testimony received and new evidence in the staff response, so Mr. Sid Friedman of 1,000 Friends of Oregon and Friends of Yamhill County requested reopening the record to give them a chance to rebut the new evidence presented by staff.

Mr. Brierley gave a brief staff report of the proposal with a PowerPoint and recommended adoption.

Mayor Andrews opened the record to accept Mr. Friedman’s request for a rebuttal to the new evidence.

Mr. Friedman stated a thirteen page response from staff was given to them on Friday, June 17, 2011 from the testimony they gave when the record was open. Attached to that was over one hundred pages of new evidence.

With only one business day available to review this material there was no chance to know what was in there in order to respond. He suggested the record should be reopened to allow the material to be reviewed and for all parties to respond to the evidence in the record.

Mr. Mahr said in fairness and due process they should be allowed to respond to the new evidence.

Discussions followed about the need to table the item and the desire to avoid a remand, but limiting the response to only issues raised by the City so staff does not have to rebut any further material coming into the record.

MOTION: Shelton/Rierson tabling **Ordinance No. 2011-2740** to the July 18, 2011, Council meeting.

Staff discussed internal deadlines for publication of the Council packet and receiving the rebuttal in time. Mr. Brierley said he was comfortable staff would be able to respond to the rebuttal without the addition of any new evidence. Councilor Rierson withdrew his second to the motion.

MOTION: Shelton/McKinney tabling **Ordinance No. 2011-2740** to the July 18, 2011, to receive additional written response but with no new evidence being accepted from either side.

Staff said material needed to be submitted by staff by July 1, 2011, for inclusion in the agenda packet or by Tuesday, June 28, 2011, by 5:00 PM so staff can respond. Councilor McKinney withdrew his second to the motion to table the ordinance.

MOTION: Shelton/Witherspoon tabling **Ordinance No. 2011-2740** to the July 18, 2011, to receive additional written response but with no new evidence being accepted from either side. (5 Yes/2 No [McKinney, Rierson]) Motion carried.

X. NEW BUSINESS

1. Consider a motion approving **Resolution No. 2011-2959** adjusting the franchise agreement pertaining to solid waste and recycling service rates for Waste Management, Inc.

TIME – 10:54 PM

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

Mr. Danicic presented the staff report (see official meeting packet for full report). Staff noted an amendment was necessary to change the number to Resolution No. 2011-2959.

MOTION: Shelton/Rierson approving **Resolution No. 2011-2959** adjusting the franchise agreement pertaining to solid waste and recycling service rates for Waste Management, Inc. (7 Yes/0 No) Motion carried.

2. Consider a motion approving **Resolution No. 2011-2954** approving an amendment to the Fire Collective Bargaining Agreement.

TIME – 10:58 PM

Mr. Mahr presented the staff report with amendments included in the memo of understanding and corrections in the numbering (see official meeting packet for full report).

MOTION: McKinney/Witherspoon approving **Resolution No. 2011-2954** approving an amendment to the Fire Collective Bargaining Agreement. (7 Yes/0 No) Motion carried.

XI. COUNCIL BUSINESS

Councilor Shelton said he appreciated the details captured in the written minutes in response to public concerns for this as the official record; he said they were very comprehensive and well done.

Mr. Mahr announced there will be a thank you lunch held to honor Terry Hansen for his prosecution work tomorrow at 11:30 AM if anyone would like to attend.

XII. ADJOURNMENT

The meeting adjourned at 11:05 PM.

ADOPTED by the Newberg City Council this 1st day of August, 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 4th day of August, 2011.

Bob Andrews, Mayor

**CITY OF NEWBERG CITY COUNCIL MINUTES
JULY 5, 2011
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

A work session was held prior to the meeting. A presentation was given from the legal department on the initiative petition. No action was taken and no decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:04 PM.

II. ROLL CALL

Members

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

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Annette de Paz, City Surveyor	Dain Eichel, Acting Public Works Director
	Barton Brierley, Planning and Building Director	Jennifer Nelson, Minutes Recorder

Others

Present: Thomas Barnes, Linda Ocheltree, George Duvendack, Leonard A. Rydell, Ed Bartholmey, Jerry Dale, and Gary Norman

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. SPECIAL PRESENTATION

Consider a motion approving a proclamation declaring July 28-31, 2011, as Old Fashioned Festival Week.

Mayor Andrews read the proclamation and presented it to Russ Thomas, chair of Old Fashioned Festival (OFF) committee and the Old Fashioned Festival Court.

V. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, reported July would be a busy month with the Old Fashioned Festival, the Special Olympics, and Tunes on Tuesday starting. He gave an update on the microphone issues update stating new ones have been ordered and are expected tomorrow and should be set up for the next Council meeting. He announced the new prescription drug drop off box has been installed and is officially in place so people do not have to wait for the annual events to dispose of their unused drugs. George Fox University (GFU) is advertising for a football coach, so the program is moving forward to build a team by 2013/14. The Chamber of Commerce plans for the new offices to be open this Thursday, July 7, 2011, which will also be the new location for the Visitors' Center with more visibility and accessibility. He also reminded the Council he will be attending a city managers' conference in Bend next week; he will be accessible by phone and email, but otherwise the city attorney will be in charge in his absence.

VI. PUBLIC COMMENTS

Mr. Thomas Barnes requested Council to consider a proposal he developed to help raise funds to purchase uniforms for the Newberg-Dundee Police Honor Guard to wear at the many events they attend around town. He spoke their professionalism and hard work and wished to coordinate with the City to endorse their efforts and show the people of Newberg and Dundee the level of service their police department is providing. He submitted the written proposal to be included in the record and considered by the Council for approval (see official meeting packet for full report).

MOTION: Shelton/Rierson directing staff to review the proposal to fund a uniform event for the Newberg-Dundee Police Honor Guard as requested by Thomas Barnes. (7 Yes/0 No) Motion carried.

Ms. Linda Ocheltree said she is a Newberg resident who works for the City as a circulation clerk at the Newberg Public Library. She spoke of the number of hours cut from the Library in the last two years even though the statistics of people checking items out at the Library and using its services have increased to their highest levels just this past March. With these kinds of cuts being made around the City and at the Library especially, she was upset by the recent water report brochure that went out from the City. When she looks at the brochure, a beautiful color booklet; she mentioned this report used to go out on standard letter sized sheet of paper and she can only see the money spent on this perhaps could have funded at least a ten hour position at the Library. She felt this was an unconscionable act when so many people are being let go from their jobs and she wanted it to be duly noted on the record the Library needs help and it does not need any more cuts.

Councilor Marc Shelton asked staff how long the water report has been published in this form and what the cost is. Mr. Danicic replied at least the last three to four years, but he did not know the cost on this.

Councilor Wade Witherspoon asked what fund this comes out of. Mr. Danicic replied it comes from the education fund from the water fund and the City is required by State law to produce a water report each year. He said it used to be on a sheet of eight and a half by eleven white paper but it was very tiny and hard to read; few paid any attention to it and they moved to this format to engage the public to read it. It is always a challenge to spend money on a mandated activity, but it is an important tool to inform and educate the public.

Councilor Shelton clarified this was outside of the general fund, which Mr. Danicic verified.

Councilor Stephen McKinney said one of the Council's goals is to excel in communications with the public and clearly this is one of the better things being produced. He sympathized with Ms. Ocheltree's concern, but said it does not negate our responsibility to produce this report. He said he heard her concern and felt this is also a reminder for the Council to ensure we are communicating in a better way to the public than we have in previous years.

Mayor Andrews said Ms. Ocheltree's concerns were noted and the Council feels her concern. He thanked her for coming forward and her point is not unheeded, but they cannot reverse the matter at this time and because of nature of funds we do have to consider this in the future.

Councilor McKinney thanked Ms. Ocheltree for her service to the Public Library.

Councilor Shelton asked about the increases in circulation and if that included the number of people getting online. Ms. Ocheltree replied the reference department would be better able to answer that question, but there are all sorts of people coming in because of the economy and the Library provides a wonderful service for the community.

Mr. George Duvendack, Distribution Manager for Waste Management, thanked Newberg for their part of the County wide discussions concerning the landfill expansion and offered some background and updates on the project. The proposal was approved through the County but when it went to the Land Use Board of Appeals (LUBA) they were informed they used the wrong process and needed to implement a different path to change the County code to allow the expansion without impacting broader established areas; he briefly explained the new plan to them. The County Commissioners will consider this change on July 21, 2011, and he invited the Council to attend the meeting. An item was distributed for the record (please see official meeting packet for full report).

Councilor Ryan Howard asked for a little more explanation of the gas power program which Mr. Duvendack provided.

Councilor McKinney asked how many homes are being provided with power from this program. Mr. Duvendack replied there are about 2,500 homes being provided with power from this program in McMinnville.

VII. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2011-2957** authorizing the city manager to approve a lease-purchase of two replacement backhoes.
2. Consider a motion approving a sound permit for Chehalem Valley Chamber of Commerce for Tunes on Tuesday held during the months of July and August.

MOTION: Rierson/Bacon approving the Consent Calendar including **Resolution No. 2011-2957** and a sound permit for Chehalem Valley Chamber of Commerce for Tunes on Tuesday as amended. (7 Yes/0 No) Motion carried.

VIII. PUBLIC HEARINGS

1. Consider a motion approving **Ordinance No. 2011-2737** amending the Newberg Municipal Code pertaining to technical specifications and signature requirements for partition and subdivision plats.

TIME – 7:30 PM

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

Ms. Annette de Paz, City Surveyor, presented the staff report aided by a PowerPoint slideshow (see official meeting packet for full report).

Mayor Andrews asked about the current practices regarding Type I and Type II processing with staff explained.

Councilor Shelton asked if the reason this is being suggested is because it is more of a County function rather than a City function. Staff replied there are requirements in the City code and those provisions have been stricken because it is the job of the County surveyor for archiving plats; it does not affect the needs of City.

Councilor Shelton asked about the term “plat map” not existing in any other documents and if it is not to be used. Staff said the partition plat includes a final map but when in discussions for land use “partition plat” has a specific definition and it is an error to refer to this as a partition map.

Councilor Witherspoon asked who put in the work to create these proposed changes and how many experts has this been reviewed by. Ms. de Paz replied she did the work and it was reviewed by the public works director, the city manager and the planning commission.

Mayor Andrews recessed briefly to allow a citizen wishing to speak on the matter to fill out a public comment form and then opened the public testimony.

Mr. Leonard A. Rydell submitted a letter to the Council and the Mayor asked if the Council wished to accept the item into the record. Mayor Andrews recessed briefly so Council could review the letter at 8:02 PM for five minutes.

MOTION: Shelton/Rierson to accept the written document based on the fact he will be providing additional verbal testimony this evening. (7 Yes/0 No) Motion carried.

Mr. Rydell said this ordinance is just a housekeeping matter and is well written, but there are a few major things not in the public's interest. He offered his recommendations regarding the description of all permanent reference monuments, including two ties to the Oregon State Plane coordinate system as defined by Oregon Revised Statutes (ORS) and the description and location of all permanent reference monuments in section J and A.4 (please see official meeting packet for full report).

Councilor Witherspoon asked Mr. Rydell about his professional expertise. Mr. Rydell said he has been an independent consulting civil engineering and it is part of his job to attend professional land surveyors' meetings. Councilor Witherspoon asked about the three different sources noted in his written testimony and asked if the other entities who reviewed this document, such as the public works director, the city manager, and the planning commission, also have access to those sources during the approval process. He did not provide this testimony to the planning commission.

Mayor Andrews asked when Senate Bill 877 went into effect and asked for clarification of the code sections he was referring to in his recommendation for section E . Mr. Rydell said the bill took effect on June 2, 2011, and he provided the Mayor with the section titles for each item in his recommendations.

Councilor Shelton questioned the city attorney about section A.4 in the code surveyor position and asked what would happen if there was not anyone filling the position, would they take action to provide another recommended person to sign off on these. Mr. Terrence Mahr, City Attorney, agreed that is what would probably have to be done, just as the city manager would delegate responsibilities to another position in the absence of an individual.

Mayor Andrews closed the public testimony.

Councilor Bart Rierson stated he would like to hear more on the letter submitted by Mr. Larry Anderson which was included in the first page of the supplemental material. Councilor McKinney stated he was not in possession of this letter and the Mayor offered him a copy. He asked about possible double billing by the County and City surveyors. Ms. de Paz provided a list given to her by the Planning and Building Director of the final plat review activities that are paid for by the fees; staff was uncertain if the fees charged even recover the actual costs. Below is what the final plat fee covers:

1. The review of the subdivision to insure all conditions of approval have been met, including the completion of construction items, review of easements, title reports, CC&Rs, special agreements, and other documents, coordination with other agencies regarding permit conditions, such as ODOT and Yamhill County, and review of any special conditions (demolition, resource or neighbor protections, utility abandonment or relocation, etc.).

2. The review of the subdivision plat itself to insure the plat complies with the approved tentative plan, and that any modifications meet Development Code standards, insure it reflects the conditions of approval, and insure it contains all items required by City codes.
3. Drafting and executing the subdivision compliance agreement
4. Entering the subdivision into City records, issuing addresses for the lots, updating the City GIS maps, updating City databases, such as Permits Plus and lands inventories, to reflect the new lots, storing and retaining the plat and subdivision documents in accordance with State retention schedules, post-recording follow up, such as to insure compliance with the subdivision agreements, installation of bonded improvements, and compliance with street tree and landscaping plans.

Mayor Andrews asked if there is a separate fee for both the preliminary and the final. Staff replied this is correct.

Ms. de Paz continued by discussing the objections to the city surveyor signing on behalf of the City because the city manager or recorder has been doing it; she stated the City is not giving up any oversight on final plats and the signatures for those positions do not get removed. Currently, there is no overview and it is based on my approval as the surveyor that the city recorder signs those plats. This is to function for who has the responsibility to ensure the final plat meets all criteria.

Councilor McKinney asked if this is a standard procedure in other cities or if Newberg handles this differently. Staff did not know the answer to this but said it is not uncommon to have the city surveyor give the final sign off because as a licensed surveyor the license carries a certain level of obligation.

Ms. de Paz addressed concerns from the public testimony regarding archiving and extra copies needing to be provided; she agreed in the age of digital databases it is a good question as to why the city is keeping a third copy but the problem is this is the only way for the City to provide evidence the plats were created and recorded.

Councilor Howard asked staff how the City would need to move to electronic archiving and how it would work. Ms. de Paz said the final third copy after the final recording could be required as a digital copy but there are pieces of information required on the face of the plat as well. Mr. Danicic explained the reason for the City requiring a copy on Mylar film to have in the files when the County has this in their files as the official archivist, just requiring a digital copy would have to be approved by the County first and discussed further with staff.

Councilor McKinney asked how many of these concerns from Mr. Andersen and Mr. Rydell are related to financial savings for them. He also added there is something to be said for having a hardcopy to maintain if something happens to the digital files.

Councilor Howard asked staff to address Mr. Rydell concerns about adding an additional tie to the coordinate system. Ms. de Paz said only one tie is needed unless it is in order to make an existing requirement make sense you could add another at an additional cost regarding the Global Positioning System (GPS), but you would have to traverse out to that point. She spoke of future abilities through the Oregon State system to import those drawings into the Geographic Information System (GIS) without having to manually digitize them, but that technology is not in place. She said the technology is available today if the City could afford to implement it.

Mayor Andrews asked staff for further explanation of the Senate Bill 877. Ms. de Paz said the bill does not change the State Plane Coordinate System by definition but the Oregon Department of Transportation (ODOT) is lobbying to add a new coordinate system and is attempting to add this into the Oregon Administrative Rules

(OAR) which is currently in the ORS. She is aware of moving the location of this but not with changing the definition of the State Plane Coordinate System.

Councilor Shelton said it makes sense to not change this at this point because we are moving ahead of where the technology is. He suggested striking any requirement for any ties or to make the requirement make sense to be used for anything beneficial. He said to be sure to make a note of this item and to bring it into the code then, but for now it should be stricken.

Mr. Danicic requested tabling the item so staff can address all the different concerns at one time since there is no critical time frame for adoption.

MOTION: Rierson/McKinney to table **Ordinance No. 2011-2737** amending the Newberg Municipal Code pertaining to technical specifications and signature requirements for partition and subdivision plats to a date uncertain to give staff time to prepare additional findings. (7 Yes/0 No) Motion carried.

2. Consider a motion tentatively approving an application to vacate a portion of Ninth Street right-of-way and directing staff to prepare an ordinance for future consideration to complete the vacation of said right-of-way.

TIME – 8:42 PM

Mayor Andrews called for any abstentions, biases, conflicts of jurisdiction, or ex-parte contact from the Council; none appeared. Mr. Mahr made the required legal statements in quasi-judicial matters and explained the procedure for testimony.

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

Councilor McKinney asked if sewer and storm go under this portion of the street to the east. Staff replied yes, sewer does and stormwater turns and ties in along the highway and Frontier has lines in the same vicinity as stormwater but not in the same ditch.

Mayor Andrews spoke of two communications from ODOT and the other material received as supplemental addressing the bypass and asked what the implication of email he just given to Council is. Staff said a question generated as to ODOT's interest in vacating their sliver of the right-of-way along the highway in addition to the rest of the street; their response was they were building the bypass and not completely sure of what their final right-of-way needs will be and they did not wish to vacate it only to come back and purchase it at a later date if needed.

Mayor Andrews asked if there were any other private utilities other than Frontier using this area. Staff said there may be but none responded.

Mayor Andrews opened and closed the public testimony as no citizens appeared to testify. Staff recommended tentatively adopting the vacation and directing staff to return with an official ordinance for approval.

Councilor McKinney asked if the vacated property shall be equally split between the owners to south and north. Staff replied it is not even and it will be reverted to the parties that dedicated it in the first place, which is quite complicated.

Councilor Shelton said part of the surveying is to determine exactly where the lines are and asked if access may be on a little of each. Staff said this is true but will be determined later.

Councilor Howard asked if the right-of-way was obtained and paid for by the City. Staff replied no to both stating the north property was dedicated through deed by the property owners in association with the participation of the south property with a subdivision plat.

Mayor Andrews closed the public testimony. Mr. Mahr made required legal statements about allowing the record to remain open for seven days after it is closed for the applicant to submit additional written material unless that right is waived.

Mr. Ed Bartholmey and Jerry Dale of Newberg Airport Properties and Gary Norman as the property owner of the southern property all agreed to waive the rights to keep the record open an additional seven days for written submittals. Mayor Andrews closed the hearing and the record.

MOTION: Witherspoon/Shelton tentatively approving an application to vacate a portion of Ninth Street right-of-way and directing staff to prepare an ordinance for future consideration to complete the vacation of said right-of-way to a date uncertain. (7 Yes/0 No) Motion carried.

IX. COUNCIL BUSINESS

TIME – 9:08 PM

Mr. Mahr asked the Council to make a motion to reconsider the second-hand dealer ordinance that passed at the June 20, 2011, meeting because staff had conflicting numbers and drafts of the ordinance than what was approved by Council.

MOTION: McKinney/Andrews to reconsider **Ordinance No. 2011-2735** establishing provisions for second-hand dealers to a date uncertain. (7 Yes/0 No) Motion carried.

Councilor Shelton discussed concerns for signs posted on vehicles downtown and asked at what point does a vehicle become sign and fall under the sign ordinance. He cited a few examples from downtown and asked if there is any enforcement available. Staff replied if the sign is permanently attached to the vehicle in a nonpublic right-of-way then it is not considered a sign; however, in regards to the pink sign not attached to a forklift in a parking lot they can employ the code enforcement officer to investigate the matter.

Mayor Andrews gave updates on the winners of the “If I Were a Mayor” Contest.

X. ADJOURNMENT

The meeting adjourned at 9:31 PM.

ADOPTED by the Newberg City Council this 1st day of August, 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 4th day of August, 2011.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 1, 2011

Order ___ No.	Ordinance ___ No.	Resolution <u>XX</u> No. 2011-2963	Motion ___	Information ___
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SUBJECT: Authorizing the Mayor to amend the Employment Agreement with Daniel J. Danicic on behalf of the city.

Contact Person (Preparer) for this Motion: Daniel Danicic, City Manager
Dept.: Administration
File No.:

RECOMMENDATION:

Adopt **Resolution No. 2011-2963** authorizing the Mayor to amend the Employment Agreement with Daniel J. Danicic on behalf of the City.

EXECUTIVE SUMMARY:

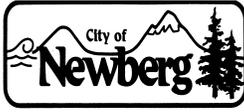
After three years of employment as city manager, Daniel Danicic is requesting a review and renewal of his employment agreement.

FISCAL IMPACT:

There is no fiscal impact related to the amended terms of employment. A change in the compensation is made only to reflect the increases realized through the normal budgeting process as provided in Section 3.B.

STRATEGIC ASSESSMENT:

The city manager is the chief executive officer of the City of Newberg as outlined in the charter. The city manager is responsible for implementing the policy of the council, directs the city administration, and achieves the goals the Council sets forth.



RESOLUTION No. 2011-2963

**A RESOLUTION AUTHORIZING THE MAYOR TO AMEND THE
EMPLOYMENT AGREEMENT WITH DANIEL J. DANICIC ON BEHALF
OF THE CITY**

RECITALS:

1. The City Council appointed Daniel J. Danicic as the city manager on April 7, 2008, to be effective April 22, 2008.
2. After three years as city manager, Daniel J. Danicic has had three performance reviews during the month of April each respective year where the City Council has found the overall manager's performance fell between excellent and exceeds expectations.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council authorizes the Mayor, on behalf of the city, to execute and do all other necessary acts to enter into an Employment Agreement with Daniel J. Danicic. Said agreement is attached as Exhibit "A" is hereby adopted and by this reference incorporated.
2. The City Council expresses its unanimous feeling that Daniel J. Danicic does an outstanding job and remains a viable part of the city.
3. The term of employment (Section 1) in the current employment agreement expires April 20, 2011, with an automatic renewal of one additional year.
4. The term of employment shall be modified as shown in the revised employment agreement, which is attached as Exhibit "A" and is hereby adopted and by this reference incorporated.
5. Section 3.A.: Compensation shall be modified to reflect the appropriate annual salary of the city manager as set by the city council in the adopted Fiscal Year 2011/2012 City Budget.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: August 2, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of August, 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this _____ day of August, 2011.

Bob Andrews, Mayor

EMPLOYMENT AGREEMENT

CITY OF NEWBERG

and

DANIEL J. DANICIC

Effective April 22, 2008

(with amendments that are effective

December 31, 2008 and April 21, 2011)

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**AMENDED August 1, 2011,
Amendments are italicized & underlined & effective April 20, 2011**

Employment Agreement

Between the

City of Newberg

and

Daniel J. Danicic, Newberg City Manager

Introduction

As amended by the City Council on August 1, 2011, this amended Agreement, made and entered into this 4th day of August, 2011, by and between the City of Newberg, a municipal corporation, (hereinafter called, Employer) and Daniel "Dan" J. Danicic, (hereinafter called, Employee an individual who has the education, training and experience in local government management).

Section 1: Term and Employment

- A. *This Agreement shall remain in full force in effect from April 20, 2011, until terminated by Employer or Employee as provided in Section 9, 10, or 11 of this Agreement.*
- B. The Employee shall serve at the will of Employer. In the event that Employee is terminated, as defined in Section 9 of this Agreement, Employee shall be paid for all salary and benefits accrued through the date of termination and, if applicable, all severance as set forth in Section 10 of this Agreement.
- C. If the Agreement is not renewed and the term expires, the Employee shall continue to be employed by the City subject to all compensation, benefits, and requirements of the Agreement, except that the Employee may be terminated at will and is not entitled to any severance pay.

Section 2: Duties and Authority

Employer agrees to employ Daniel J. Danicic as City Manager to perform the functions and duties specified in Section 34 of the City of Newberg Charter and to perform other legally permissible and proper duties and functions as assigned by the Employer.

Section 3: Compensation

- A. Base Salary: Employer agrees to pay Employee an annual base salary of One Hundred Twenty Thousand Six Hundred Twelve Dollars (\$120,612.00) payable in installments at the same time that the other employees of Employer are paid.
- B. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by Employer's compensation policies.
- C. Consideration shall be given on an annual basis to adjust compensation.

Section 4: Health, Disability and Life Insurance Benefits

- A. Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for Employee and his dependents in the same manner as and equal to that which is provided to all other employees of the City of Newberg.
- B. Employer agrees to make required premium payments for Workers Compensation Insurance and long-term disability insurance for Employee in the same manner as for all other employees of the City of Newberg.
- C. Employer shall pay the amount of premium due for term life insurance in the amount of three times Employee's annual base salary, including all increases in the base salary during the life of this Agreement. Employee shall name the beneficiary of the life insurance policy.

Section 5: Vacation, Sick, and Administrative Leave

- A. Employee is entitled to accrue all unused vacation and sick leave subject to the same limitations as other employees of the City of Newberg, and in the event Employee's employment is terminated, either voluntarily or involuntarily, Employee shall be compensated for all accrued vacation time, paid holidays, and unused administrative leave to the date of termination.
- B. Employee shall annually be credited with fifteen (15) days of administrative leave beginning July 1st, which cannot be carried over from fiscal year to fiscal year.
- C. Employee shall receive credit for thirteen (13) years length of service commencing the effective date of this Agreement. Employee shall accrue vacation at the higher years of service rate of 18 vacation days per year with standard vacation awards, as they correspond with length of service pursuant to the Vacation Benefit section of the Personnel Rules and Regulations.

Section 6: Automobile

Employee shall furnish his own transportation for business purposes. The cost of such transportation shall be born by Employee. Employer shall reimburse Employee at the IRS standard mileage rate for any business use of the vehicle.

Section 7: Retirement

Employer agrees to make all the appropriate contributions on Employee's behalf, for both Employer and Employee, into the PERS retirement system.

Section 8: General Business Expenses

- A. Employer agrees to pay for professional dues and subscriptions of Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for Employee's continued professional participation, growth, and advancement, and for the good of Employer.
- B. Employer agrees to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the League of Oregon Cities Annual Conference, and such other functions of national, regional, state, and local governmental groups and committees in which Employee serves as a member.
- C. Employer also agrees to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for Employee's professional development and for the good of Employer.
- D. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable Employee to become an active member in local civic clubs or organizations.
- E. Payment of any of the general business expenses identified in this Section shall be subject to approval through the City budget process.

Section 9: Suspension and Termination

- A. Employer may suspend Employee with full pay and benefits at any time during the term of this Agreement.
- B. For the purpose of this agreement, termination shall occur when:
 - 1. The majority of the Council, as defined in the City of Newberg Charter, votes to terminate Employee at a duly authorized public meeting.

Exhibit "A"

To Resolution No. 2011-2963

2. If the Employer, citizens or legislature acts to amend any provisions of the City of Newberg Charter or the Code of Newberg pertaining to the role, powers, duties, authority, responsibilities of Employee's position that substantially changes the form of government, Employee shall have the right to declare that such amendments constitute a termination. However, Employee may declare that such amendments constitute a termination only if Employee also reasonably declares that such amendments result in a material negative change to Employee in Employee's employment with Employer, such as the duties to be performed, the conditions under which the duties are to be performed, or the compensation to be received for employment with Employer.
3. If Employer reduces the base salary, compensation or any other financial benefit of Employee, unless it is applied in no greater percentage than the average reduction of all other employees, such action shall constitute a breach of this agreement and will be regarded as a termination.
4. If Employee resigns following an offer or suggestion by Employer, whether formal or informal, to accept resignation and such offer or suggestion is represented as being the will of the majority of the Council that the Employee resign, then the Employee may declare a termination as of the date of the offer or suggestion.
5. Breach of contract may be declared by either party with a thirty (30) day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20, provided, however, a material breach of the contract by the employee which the employee fails to cure within the thirty (30) day period shall not be a termination for which severance pay shall be paid.

Section 10: Severance

- A. Severance shall be paid to Employee when employment is terminated as defined in Section 9.
- B. Employer shall provide a minimum severance payment equal to six (6) months salary at the current rate of pay, including the cost of health insurance. This severance shall be paid as a lump sum, unless otherwise agreed to by Employer and Employee and will be paid within 30 days of termination.
- C. Employee shall also be compensated for all accrued vacation time, paid holidays, and unused administrative leave.
- D. If Employee is terminated because of an indictment or charge of a felony, conviction of any felony or conviction of any misdemeanor involving moral turpitude or malfeasance in office, then Employer is not obligated to pay severance under this Section, provided, however, if the employee is not convicted on said indictment or charge within two years, severance pay shall be paid.

- E. Despite any contrary provision of this Section 10 or any other part of this Agreement, all severance under this Section 10 shall be paid only on or after the date Employee 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 Employee's second taxable year following Employee's taxable year in which the separation from service occurs.

Section 11: Resignation

In the event that Employee voluntarily resigns his position with Employer, Employee shall provide a minimum of sixty days notice unless the parties agree otherwise. Employee may not use accrued vacation time during the sixty-day notice period.

Section 12: Performance Evaluation

- A. During the first year of this contract, the Employee shall receive a performance review between the first six (6) to eight (8) months.
- B. Employer shall annually review the performance of Employee subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to Employee within fifteen days of the evaluation meeting.

Section 13: Hours of Work

It is recognized that Employee must devote a great deal of time outside the normal office hours on business for Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 14: Outside Activities

The employment provided for by this Agreement shall be Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to Employer and the community, Employee may elect to accept limited teaching, consulting or other business opportunities with the approval of Employer and the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.

Section 15: Residency

Employee shall maintain his residence within the corporate limits of the City of Newberg. Employer shall have the sole right to approve any exception to this requirement. Failure of Employee to observe this requirement is grounds for termination. Such termination is not subject to the payment of severance as provided for in Section 10 of this Agreement.

Section 16: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from his exercise of judgment or discretion in connection with the performance of his duties or responsibilities, unless the act or omission involved willful or wanton conduct. Employee may request and Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties, unless the claim, action, suit or proceeding arises as a result of willful or wanton conduct. Any settlement of any claim must be made with prior approval of Employer in order for indemnification, as provided in this Section, to be available.

Section 17: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

Section 18: Other Terms and Conditions of Employment

- A. Employer may, upon agreement with Employee, fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Newberg Charter or any other law.
- B. Except as otherwise provided in this Agreement, Employee shall be entitled to the same level of benefits that are enjoyed by other employees as provided in the City of Newberg Charter, Code of Newberg, City of Newberg Personnel Rules and Regulations or by practice.
- C. Except as otherwise provided in Agreement, Employee is bound by the City of Newberg Personnel Rules and Regulations (Employee Manual).

Section 19: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) EMPLOYER: Mayor and Council
City of Newberg
PO Box 970

Newberg, OR 97132
(503) 537-1276

(2) EMPLOYEE: Daniel J. Danicic
2516 E. 3rd Street
Newberg, OR 97132
(503) 476-7702

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 20: General Provisions

- A. Integration. This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of Employee by Employer. Any prior agreements, discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of this Agreement. Such amendments shall be incorporated into and made a part of this Agreement.
- B. Binding Effect. This Agreement shall be binding on Employer and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Effective Date. This Agreement shall become effective on April 22, 2008.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

IN WITNESS WHEREOF, Employer has caused this Agreement to be signed and executed in its behalf by its Mayor and Employee has signed and executed this Agreement, both in duplicate, the day and year first above-written.

CITY OF NEWBERG:

EMPLOYEE:

by _____		_____	
Bob Andrews	Date	Daniel J. Danicic	Date
Mayor		City Manager	