



**CITY COUNCIL AGENDA
APRIL 16, 2012
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. SPECIAL PRESENTATIONS

1. Consider a motion approving a proclamation declaring April 15-21, 2012, as National Volunteer Week. (Pgs. 3-4)
2. Presentation of the “If I Were Mayor...” Contest First Place Winners.

V. CITY MANAGER’S REPORT

VI. 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)

VII. CONSENT CALENDAR

Consider a motion approving the March 19, 2012, City Council meeting minutes. (Pgs. 5-15)

VIII. PUBLIC HEARINGS

Public Hearing and discussion on **Ordinance No. 2012-2752** amending the Newberg Municipal Code pertaining to the Citizens’ Rate Review Committee section allowing utility rates and/or fee increase to be referred to the voters through the State referendum process. (Pgs. 17-28)

(Legislative Hearing – First Reading)

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

IX. CONTINUED BUSINESS

Consider a motion adopting **Resolution No. 2012-2988** establishing policies and procedures for administration of the Affordable Housing Trust Fund Bylaws. (Pgs. 29-41)

X. NEW BUSINESS

1. Consider a motion adopting **Resolution No. 2012-2999** amending the downtown design guidelines to include a new inverted-U bicycle rack design in four colors. (Pgs. 43-45)
2. Consider a motion adopting **Resolution No. 2012-3000** approving a hardship request by the Foothills Water Company water district. (Pgs. 47-57)

XI. COUNCIL BUSINESS

XII. 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 dial 711.

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: April 16, 2012

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

SUBJECT: Approve a proclamation declaring the week of April 15-21, 2012, as National Volunteer Week.

Contact Person (Preparer) for this Motion: Bob Andrews, Mayor
Dept.: Administration
File No.:

RECOMMENDATION:

Approve a proclamation declaring the week of April 15-21, 2012, as National Volunteer Week in celebration of all the volunteers in our community that help keep our city and community thriving.

EXECUTIVE SUMMARY:

The City of Newberg City Council would like to show their appreciation and by a proclamation declare the week of April 15-21, 2012, as National Volunteer Week.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

This supports the council's desire to recognize the importance of all the volunteers serving in various capacities for the city of Newberg community contributing to making Newberg a better place.



PROCLAMATION

A PROCLAMATION DECLARING THE WEEK OF APRIL 15-21, 2012, AS NATIONAL VOLUNTEER WEEK

WHEREAS, citizens who volunteer their time provide assistance which can not be measured in terms of dollars; volunteers provide a spirit of helping that multiplies in value when each citizen reaches out to assist another; and

WHEREAS, volunteers throughout the city of Newberg donate their time to a wide variety of human service programs such as alcohol and drug rehabilitation centers, senior centers, battered women's shelters, and programs for child abuse prevention, maternity and adoption, the developmentally disabled, literacy, housing for the low income citizen and the disabled, and the homeless; and

WHEREAS, these citizens also donate their time in helping the City of Newberg through their service on City Council, Boards, Commissions and Committees; and

WHEREAS, the City of Newberg has many volunteers providing services to the various City departments including the Library, Police, Fire, Administration, Planning and Building, and Public Works Departments.

NOW, THEREFORE, IT IS PROCLAIMED by the Mayor and City Council of the City of Newberg, Oregon, the week of April 15-21, 2012, as

NATIONAL VOLUNTEER WEEK

in the City of Newberg and we urge all residents of Newberg to recognize, support and commend these special volunteers.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Newberg to be affixed on this 16th day of April, 2012.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: April 16, 2012

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

SUBJECT: Approve the March 19, 2012, City Council Meeting minutes.

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

RECOMMENDATION:

Approve 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.

CITY OF NEWBERG COUNCIL MINUTES
MARCH 19, 2012
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

A work session was held prior to the meeting. An update from the fire department on ambulances and a presentation from Comcast Cable were given. All Councilors and the Mayor were present; no action was taken and no decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:01 PM.

II. ROLL CALL

Members

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

Staff

Present: Daniel Danicic, City Manager Terry Mahr, City Attorney
 Barton Brierley, Planning and Building Director Norma I. Alley, City Recorder
 David Beam, Economic Development Coordinator Jennifer Nelson, Deputy City Recorder

Others

Present: Leah Lockwood, Mike Gougler, Dennis W. Gaibler, Wes Beecroft, Cathy Stuhr, Curtis Walker, Kathleen Carl, Lolita Carl, Sid Friedman, Mia Nelson, Ilsa Perse, Lee Does, Dorothy Roholt, Tony Rourke, and Chuck Zickefoose

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. SPECIAL PRESENTATIONS

Consider a motion approving a proclamation declaring March 26-31, 2012, as Carnegie Library Week.

<p>MOTION: Rierson/McKinney approving a proclamation declaring March 26-31, 2012, as Carnegie Library Week. Motion carried (7 Yes/0 No).</p>

V. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, reported that Representative Kim Thatcher will be holding a Town Hall event at Avamere (Foothills Drive and College Street) on Wednesday, March 21, 2012, at 6:00 PM.

VI. PUBLIC COMMENTS

Ms. Leah Lockwood, Lockwood Design/Build, Inc., stated she recently sent a letter to council regarding the townhouse style apartment complex she and her husband are building on Church Street and a request to consider reducing and delaying payments for System Development Charges (SDC) and reducing payment for the building permit, which has already been paid. Her concerns are outlined in her letter, but the main concern is the valuation of construction costs for the project. She explained how they first budgeted one million dollars

with the highest estimate being \$1.1 million, then planning staff came up with \$1.3 million which they thought was high but reasonable. They submitted the \$1.3 million figure to the bank and based all their permit fees and SDCs on this information. Over the course of the next year working with the planning department and the building permit process there were two additional increases because of the State of Oregon's construction cost per square foot price and the city's 8% increase. She asked several times for an estimate of what the real costs were going to be as a result of these increases and was told that was not calculated until the end when the permit is issued. She did not receive a written estimate until the bank was ready to pull their money which was assessed at \$2.4 million. She said this figure was absurd and there is no way anyone would spend that on an apartment complex especially when the land has not been taken into consideration here. She said they had \$200,000.00 budgeted for SDCs and they are now looking at \$270,000.00 along with some other charges for heating, ventilation, and air-conditioning (HVAC) and electrical. In summary they are way over budget and disappointed with the way the process went. They understand planning is understaffed and a little disorganized, however, they are moving forward with good faith effort for a good development and nice housing for the City of Newberg, half of which would be considered low income. She is asking for a reduction and deferral of the balance of the SDCs and a reduction and credit of the building permit fees, which they had to pay or risk shutting the project down.

Councilor Denise Bacon asked when she wanted the delay to go to. Mrs. Lockwood stated they want the SDCs deferred to ninety (90) days after the certificate of occupancy so they can roll it over to more permanent financing or they will have to put it up for sale to pay the SDCs.

Councilor Bart Rierson asked staff why or how a building structure valuation can go from \$1.2 to \$2.4 million. Mr. Barton Brierley, Planning and Building Director, replied building permits are based on a valuation table given by the State and they have to use that; it is based on square footage, the type of construction, and the valuation table. The table even notes this may or may not relate to the actual construction costs. Councilor Rierson asked about a question in the letter regarding the square footage including garages, porches, decks, interior/exterior walls, atrium and space above the stairs that cannot actually be used in the home. He said he is struggling to put together how a complex's construction costs can be \$1.2 million with \$270,000.00 of that in fees, which is a fifth of the costs. Mr. Brierley clarified they did not count the atriums and area above the stairs, but they did include the area under the stairs which is usually a closet. He said the definition of gross square footage is in the building code and that is the definition we used; they worked strictly out of the building code. Councilor Rierson expressed concern for budgeting processes because it is important to know what building fees would be and they may not have been accurately communicated.

Councilor Marc Shelton stated in looking at Ordinance No. 2012-2750 in the notes on page 15 there is mention of one project currently in a 90 day deferral and asked staff if this is that project. Mr. Brierley replied yes. Councilor Shelton mentioned a point of order and questioned if they are actually discussing something on the agenda this evening. Mayor Andrews stated the developer came asking for a deferral outside of the action that will be taken tonight, so it is exclusive. Councilor Shelton stated there will be some action taken tonight that might give resolution to this issue.

VII. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2012-2993** approving City Attorney Terrence Mahr's annual evaluation.
2. Consider a motion approving the February 21, 2012, City Council meeting minutes.

MOTION: **Rierson/Shelton** approving the Consent Calendar including **Resolution No. 2012-2993** and the City Council minutes from February 21, 2012, as amended. Motion carried (7 Yes/0 No).

VIII. PUBLIC HEARINGS

1. Consider a motion approving **Ordinance No. 2012-2750** deferring the collection of System Development Charges for affordable housing projects.

TIME – 7:20 PM

Mayor Andrews introduced the item as a legislative hearing in its second reading and said as they previously called for any conflicts of interests or abstentions at the first reading and none were mentioned, they will continue with deliberations. He mentioned they had allowed the record to remain open for seven days to accept written testimony only, none was received during that time; however, one item was received after the seven days and it would be up to council to accept it or not.

Councilor Shelton stated they announced at the first reading what the deadline was with a date specific and they should adhere to that.

MOTION: Shelton/Witherspoon to not accept the late written testimony received after the deadline. Motion carried (7 Yes/0 No).

Mr. Brierley presented the staff report and recommended adoption (see official meeting packet for full report).

Mayor Andrews asked for further explanation of page 16, paragraph seven, about staff not recommending SDC deferrals for any projects other than affordable housing. Mr. Brierley explained when fees are deferred it is to benefit the developer and give them incentive to encourage the type of project that may not happen otherwise. The Affordable Housing Action Committee discussed applying this program to all development but felt it would be a stumbling block with extra administrative efforts to collect the deferred monies at the certificate of occupancy phase. There is also the issue of funding for projects; the SDCs go into funds for capacity increasing projects, and the only reason fees were deferred in 2011 was because there were not any capital improvement projects (CIP) being built, so the SDC deferral impact was not felt as much. If only the affordable housing projects take advantage of this, than 5% or less of the overall projects will not have a big impact, but it does when adding more projects with deferrals. For those two reasons, staff recommended only doing this for affordable housing projects.

Councilor Wade Witherspoon said according to 13.05.096, it leaves the door open for an application process for deferral; he asked staff to elaborate on this because it says Council may allow deferrals upon application, but they do not know when applications are made. Mr. Brierley replied when a letter is written requesting a deferral the developer must show they meet the criteria and then it would be brought before the Council as an action item.

Councilor Shelton asked how this differs from 13.05.095 (C) with the city manager determining whether the project qualifies, and the applicant appealing the decision to the council. Mr. Brierley replied if it is an affordable housing project then the city manager would approve it and if it is a project other than affordable housing it would go to council. For affordable housing projects, only appeals on city manager decisions would come to council.

Councilor Wade Witherspoon asked for an example or reason why a developer would not apply for deferral. Mr. Brierley replied it is up to council but they will not all meet the criteria and would be advised that approval is unlikely. Mr. Brierley added the time it would take to come to council to go through the determination process may be a deterrent.

Mayor Andrews asked about page 15 and how low income households are defined since they do not have an index addressing this; he wished to have an establishing index included before final deliberations. He also

pointed out in the ordinance deferrals are only for the construction of a dwelling and asked staff if this limits deferrals to residential development only. Mr. Brierley stated 13.05.095 states this but 13.05.096 opens it up for council to approve deferrals for other projects if this is adopted.

Mayor Andrews asked what is referenced in 13.05.095 (B). He felt this leaves it open. He also pointed out the rate is identified in 13.05.095 (F) and suggested to cite 13.05.095 (C) to make it cleaner and have less places to make corrections.

Councilor Stephen McKinney also wondered about the definition of low income on page 15. He asked staff how many low income projects are currently in the works. Mr. Brierley said for affordable housing projects we have done the two Habitat for Humanity homes, some of the units in the apartment complex discussed tonight on Church Street may qualify, and a project on Meridian Heights that is coming in would be the only affordable housing projects in the works. Councilor McKinney felt this needed to be adequately defined in the resolution to be clear and added the council seems to agree they desire a level playing field for deferral applications to stimulate growth and help to create a more livable community. He did not think the recitals were adequate to vote on tonight but added the planning director and his staff are doing a great job with their current budget limitations.

Councilor Shelton asked staff in the case of the testimony received in public comments tonight, when the designs are put before you with half matching criteria for affordable housing and the other half not, how is this handled for deferring SDCs. Mr. Brierley said if the applicant demonstrates the information for how they are achieving this then it would be written into a contract with them to deliver that; it was purposefully left flexible because different projects can achieve this in different ways. The city manager can decide whether they meet the criteria or not.

Councilor Ryan Howard asked if there was a more objective standard for the definition of low income rather than less than 80% of median income. Mr. Brierley said this is what is commonly used, what is subjective is the area of median income because there are three different numbers for Newberg, Yamhill County, and Portland Metro. Councilor Howard asked how the amount is assessed from a person's income; staff replied 30% of the income is used for housing.

Mayor Andrews asked if staff was comfortable with the change from six to three months for deferral; staff replied yes. Mayor Andrews continued by agreeing with Councilor Rierson's displeasure with the process and the general consensus with the council leaning in a different direction for a proposal to include all residential construction. He said there are mechanisms to make this revenue neutral for administration costs and he felt this would still be advantageous as a mini-stimulus program.

Councilor Witherspoon said he was conflicted because he was hoping to see the ordinance move through, but he does not support it with the rewrites, especially with 13.05.096 to come before council. He did not want to look at every application that comes through and would rather see a deferral towards residential but open to all.

MOTION: Witherspoon/McKinney postponing deliberations on **Ordinance No. 2012-2750** deferring the collection of System Development Charges for affordable housing projects to a date uncertain.

MOTION: Rierson/Andrews amending the motion to postpone **Ordinance No. 2012-2750** providing staff with instructions and additional points for the ordinance to include all residential construction for low income; to make a program cost neutral so administrative costs and interest lost are covered by the fee the applicant chooses to pay upfront and to include an index similar to the Housing Authority of Yamhill County for lower income housing for reference. Motion carried (7 Yes/0 No).

MOTION: Shelton/Rierson amending the motion to postpone **Ordinance No. 2012-2750** to exclude 13.05.096 from consideration. Motion carried (7 Yes/0 No).

Councilor Shelton spoke of the motion before them as amended and the desire to not extend this out indefinitely. He suggested using 2012-2013 to establish a pilot program with follow-up to see how it affects city staff and to have a sunset clause as they did in 2011 for reconsideration.

VOTE: To postpone **Ordinance No. 2012-2750** as amended to a date uncertain. Motion carried (7 Yes/0 No).

2. Consider a motion approving **Ordinance No. 2012-2751** adopting revised findings for the South Industrial UGB amendment and revisions to the Economic Opportunities Analysis.

TIME – 8:05 PM

Mayor Andrews introduced the item as a legislative hearing in the first reading and called for any conflicts of interest or abstentions; none appeared.

Mr. Brierley presented the staff report with the use of a PowerPoint and recommended approval (see official meeting packet for full report).

Councilor Howard asked about a discrepancy in the employment projection at the end of 2010-2011. Mr. Brierley replied a large employer, SP Newsprint, is between the Urban Growth Boundary (UGB) and the city limits.

Mayor Andrews opened public testimony and started with **proponents**:

Mr. Dennis Gaibler said he grew up on sixty (60) of the acres intended to be included in the UGB and spoke of his support for industrial opportunities in the area so people can live and work in the same area. He encouraged council to consider whatever activity they have to promote the south industrial region and promote good solid employers in the area.

Mr. Mike Gougler spoke of the process beginning over ten years ago for a specific master plan for the 300 acres just south of Hwy 99 and east of Springbrook Road and the reasons behind designating 40 acres on the west side of the east branch as industrial because of the desired bypass plans. He said he worked on the ad-hoc committee for two years with limited public attendance until the results were published; then the outside input, warning, and threats started from a great number of people that did not have a “dog in the fight”. He said this ordinance makes sense and is the only way to take advantage of the access enabled by this development rather than become a service station along the road. He strongly advised the council to resist the kind of bullying accomplished by sending 500 pages of stuff that cannot be argued with because it does not flow with what is best for the future of Newberg.

Mr. Wes Beecroft said he supports the UGB expansion as he works for an industrial company, Climax, and this has an impact on the people who work there who want to live and shop here, too. He said it is good for all involved from manufacturing to agriculture. He said he was born and raised here and came back to Newberg because they had the industry to support him; he said it may not be fancy like wine, but it brings in a lot of people from all over the world too. He is happy he can leave work to see his sons play at lunch time and says you cannot put a price on that.

Ms. Cathy Stuhr said many have been working on the foundation and planning of this expansion since 2003 and it is now time to adopt this legislation and stop readjusting the bar. They cannot plan every time something changes and asked there be a stop with the delay tactics to get on with Newberg’s future. The majority of the

community shares in this decision and we are not seeing all the people who support it because they expect it to happen. This is the best option and location and no other city had done such a great job vetting where this should go. It is reasonable and moderate and essential to the vitality and longevity of this community. She urged council to support this.

Mr. Curtis Walker said as a Newberg resident, builder and developer he is in favor of this and encouraged council to vote to approve it. He said now is the time to get land zoned and shovel ready for industry and business to locate here, because those looking for places that want to start now cannot take two to three years for approval. He said as the economy improves, those who have the ability will want to expand and improve in this new area and we need to be competitive with land available for purchase and development. Our community desires the opportunity to work where we live and we do not want to be a bedroom community. We must be prepared to create new jobs; our location is very attractive with a university, golf course, hospital, airport, cultural center, dental equipment business, destination resort and wine industry already here. We can and will attract industrial business, so let's be ready.

Opponents:

Ms. Kathleen Carl said she was in opposition to the size of this UGB as a member of the Marion county farm bureau. She said that farming is an important and economically productive industry and no one will keep this land agriculturally productive when it becomes part of the UGB. She said it is important and they need to keep agriculture that attracts people too and she asked to limit this UGB.

Ms. Lolita Carl said she is a full time farmer from Marion County and is on the Oregon Farm Bureaus Advisory Committee but speaking for herself. She and her fellow farmers are concerned for this UGB expansion towards St. Paul because it impacts moving farm equipment around, increases traffic, and negatively affect the French Prairie farmers. There has been too little consideration of this land for its agricultural productivity being #2 in Oregon for the top farm land in the State. As population grows and energy costs increase we need land to sustain our most primary needs year after year and generation after generation.

Mr. Sid Friedman, 1,000 Friends of Oregon, said he did not expect to be here again to testify on the same UGB proposal as the one before you a year ago. He spoke of Newberg using three different population projections and still saying the same 260 acres needs to be brought in regardless. He said his concerns have been repeatedly glossed over by staff, the Land Use Board of Appeals (LUBA) has proved 1,000 Friends right, and instead of waiting for the County to finish the city is just moving ahead. He spoke of the expenses of extending city services beyond the urban fringe and the collection of SDCs for urban renewal even if development does not happen. He said the Economic Opportunities Analysis (EOA) is not complete; this does not comply with State planning rules and does not make sense. He said they need to look at the whole picture for a rational proposal to identify all the commercial land available and the city has spent time, money and effort changing rationale for a predetermined conclusion; it does not have to be all or nothing.

Ms. Mia Nelson, 1,000 Friends of Oregon, said we have been at this a long time and still debating the forecast with nothing being accomplished. She agreed the city needs to look for industrial land supply but they are doing it the wrong way by paving over farmland. She said The Newberg Graphic printed that people value farmlands and predicted they will come away empty as this proposal is not a real option. She asked for open minds to look for better options that may not be exactly what they want. She said Newberg is the only city that is fighting with their group while others are cooperating. She is willing to work very hard to look at the options Newberg can actually get.

Councilor Rierson asked about comments that the population estimate is illegal. Ms. Nelson said since the employment forecast has not changed, that is the part that is illegal because they are planning for the same amount of employment for a city that is not going to grow as much.

Councilor Shelton asked if the only option is for the City to work with the 1000 Friends of Oregon. Ms. Nelson said it is not the only option, but for this to succeed they need to be in concert; it is just an offer to discuss the problems they see and some alternatives instead of having multiple runs at this that gets shot down.

Councilor Howard asked about her alternatives and if they were the ones provided in section ten of their letter. Ms. Nelson said the thing to do is look at all the places besides prime farmland even though farmland is the easiest because it is flat and well-drained. She said it may be more challenging to fit development into already developed areas but it seems great if farmland is preserved. She said the Oregon system forces cities to do what is harder but it may not be as bad as you think.

Ms. Ilsa Perse said she is from Carlton and the whole world is flocking to buy farmland, because we need it to grow food and there is concern this is shortsighted when the production of food will be really important down the road. She said when food growing can be made available locally there are important jobs and lots of land in Newberg that can support this kind of industrial growth. She is not opposed to industrial growth, as she started her own publishing company; she likes business and growing businesses and appreciates Newberg wants to continue, but she warned them to look in McMinnville's industrial area at all the vacant lots looking for business and trying to find people to come. It's not quite as easy as the whole "build it and they will come" idea, because it paves over farmland and we all will be caught when we do not have industry or the ability to grow food.

Mr. Lee Does said he has also been a part of this process for more than ten years and is opposed to and frustrated with city staff's ongoing request to bring 260 acres of high quality farmland into the UGB. He and his wife, Amy, have a keen interest in protecting farmland. They do not object to employment and growth opportunities, but must object while existing employment sites are available and continue to be. Class one and two soils are the best there is and primary reason agriculture is the leading industry in Yamhill County, and the State says you cannot take it until you use up the other options. He spoke of volumes of industrial sites in Newberg, Sherwood and Tualatin still vacant while they still want to pave more farmland. He said the proposal remains unchanged despite the arguments and said they should focus on finding tenants of underutilized lands instead of wasting time on this.

Ms. Dorothy Roholt said this is the same cast and characters and it just goes on and on. If this proposal went through and is built up with a thriving commercial area there are major concerns for those driving around here with already overcrowded highways and she asked why they do not consider building on existing UGB rather than expanding. She said some may see public input as bullying, but felt it is vital to what is going on.

Ms. Norma Alley, City Recorder, presented correspondence received after the 5:00 PM deadline last Thursday for council consideration. Mr. Terry Mahr, City Attorney, stated the council does not have a choice about accepting the material as that is the purpose of the first reading and the testimony was opened this evening.

MOTION: McKinney/Bacon accepting the written testimony received. Motion carried (7 Yes/0 No).

Mr. Brierley added there is an agricultural producer in this area who would like to be included in the UGB to have water and sewer services provided. He agreed it is important to support agriculture and to have an adequate UGB; they have worked closely with the Department of Land Conservation and Development (DLCD) and part of their role is to both conserve and develop, so there is a balance. This has been reviewed carefully by DLCD's staff director and no indication was given that it is not 100% compliant with the statewide planning rules and goals. He recommended adoption of the ordinance.

Mayor Andrews closed the public hearing until the second reading at the April 2, 2012, meeting, allowing the record to remain open for seven days to accept further written testimony only.

Mayor Andrews recessed at 9:27 PM and reconvened at 9:34 PM.

3. Consider a motion approving **Resolution No. 2012-2994** adopting new monthly water rates effective January 1, 2013.

TIME – 9:34 PM

Mr. Danicic presented the staff report with the use of a PowerPoint (see official meeting packet for full report).

Councilor McKinney asked if stormwater has the greatest level of catch-up because it has been on the back burner. Staff agreed it has been a secondary activity in the public works program and they are now playing catch-up with the water quality regulations, specifically in stormwater.

Councilor Shelton asked if the contingency needed to be that large. Staff replied it is important in the case of stormwater because unlike wastewater and water there is not a separate reserve fund; they must carry all the reserves in this fund and the entire contingency opposed to the replacement reserves, which provides the greatest flexibility.

Councilor McKinney asked if the contingency is not used does it alleviate the pressure on the following years. Staff replied it carries forward from year to year as long as they are available for unanticipated needs.

Councilor Rierson asked if this was an appropriate way to manage the fund. Staff replied it is because ideally you look to have three months of operating costs in reserve, so you need a good million dollars just for that.

Councilor McKinney asked if they can still use contingency monies for transfer of debt with SDC deferrals exacerbating the problem. Mr. Danicic said not to eliminate it; instead postpone collection and they could use contingency to pay for debt, but they need the overall fund to balance.

Councilor Rierson questioned the consumption comparison with fixed versus volume. Staff said for the proposed rates, experiences may be varied for those using less water.

Councilor Shelton asked what if the rates were flat for two years, would we see an increase or does it give time to see the usage. Mr. Danicic replied pushing it off would require double digit rate increases; staff cut back a lot and flattened as much as possible.

Councilor Howard was concerned about changing the methodology, because they are getting away from encouraging conservation; although there are increases in the five year plan they are not sufficient to keep enough in reserves for contingency and normal replacement of the system. He said by not increasing to a sustainable rate they are pushing off the costs into the future, which will be financed or will create huge increases. Mr. Danicic stated moving from fixed allocation does not entirely change the conservation incentive because it still has 80% based on volume; he agreed it may not be ideal and the Citizens' Rate Review Committee (CRRC) would like to do more, but it is a political decision after many years of significant rate increases to ease off without heading to catastrophe. He believed they could handle two more years of reduced rate increases, but assured they will be going back up again.

Mayor Andrews opened public testimony:

Mr. Tony Rourke, CRRC Chair, said he was present to show support for the process and he agrees with Councilor Howard this is not adequate to fund the system going forward. He said they dug themselves a hole in the 1990's and have been trying to climb out over the last ten years, but cannot get out fast enough. He said this will delay the need to put more funds in the system and spoke of the significant debt to finance \$40 million that needs to be put into the wastewater treatment plant. He said there have been significant cuts made already and they were tasked to find as much money as possible without cutting staff. It was a choice for how the economy

is now with a hope of improvement and growth to mitigate the double digit increases that were not popular over the last two years.

Mr. Chuck Zickefoose, CRRC, said the last six years and three cycles have been the most difficult. It is always a push to keep up with infrastructure needs and they recognize it will cost more in the future after ten years of flat rates. He said it is going to be easier this year but warned the years to come will take their toll. He commended staff, the consultant Ms. Deb Galardi, all of the CRRC, and the Mayor for the work done. He encouraged them to pass the proposed rates keeping in mind what the future holds.

Mayor Andrews closed the public testimony.

MOTION: Rierson/Shelton to postpone **Resolution No. 2012-2994** adopting new monthly water rates; **Resolution No. 2012-2996** adopting new monthly stormwater rates; and **Resolution No. 2012-2996** adopting new monthly stormwater rates, all effective January 1, 2013, to the June 18, 2012, City Council meeting. Motion carried (7 Yes/0 No).

4. Consider a motion approving **Resolution No. 2012-2995** adopting new monthly wastewater rates effective January 1, 2013.

Decision tabled until June 18, 2012, according to the motion above.

5. Consider a motion approving **Resolution No. 2012-2996** adopting new monthly stormwater rates effective January 1, 2013.

Decision tabled until June 18, 2012, according to the motion above.

IX. NEW BUSINESS

Consider a motion approving **Resolution No. 2012-2988** establishing policies and procedures for administration of the Affordable Housing Trust Fund Bylaws.

TIME – 10:35 PM

Mayor Andrews passed the roving gavel to Councilor Denise Bacon who introduced the resolution and called for any conflicts of interest or abstentions; none appeared.

Mr. David Beam, Economic Development Coordinator, presented the staff report and pointed out staff changes (see official meeting packet for full report).

Mayor Andrews asked about the \$70,000.00 being a dedicated fund to the Housing Authority of Yamhill County. Staff said it is a dedicated line item for housing rehabilitation and the Economic Development Loan Fund on line 18 is separate.

Councilor Rierson discussed funding mechanisms and postponing SDCs for possible savings to developers as a potential mechanism to cover administrative costs and maybe even encourage contributions to this fund as a way to take advantage of delayed payments. He said he would also like to see the finance changes made before approving this.

Mayor Andrews reviewed several scriveners' errors within the document with staff and worked through suggested changes. He spoke about page 457 and the income not exceeding 100%, but the established standard for affordable housing is less than 100%; he suggested citing the index and being consistent. He asked for clarification on receiving subsidies on 3.3; staff replied they are talking about other sources and not the trust

fund. On page 461, 3.5h with providing rental assistance he asked if that is through YCAP or are we doing our own; staff replied it is supplemental, we are not taking over what they are doing, but filling the gap for what they are not providing at this time. In regards to 5.7 Mayor Andrews wished to know if the commission was meeting once a year; staff replied they would not meet more than once a year to do the Request for Proposal (RFP) but they will meet more than that if needed. Mr. Brierley added the code does address and define moderate, low and very low income and the 100% or less; Mayor Andrews said he would encourage more consistency with the references.

Mayor Andrews opened and closed the public testimony. Staff recommended adoption with the discussed changes and amendments.

MOTION: Howard/Rierson approving **Resolution No. 2012-2988** establishing policies and procedures for administration of the Affordable Housing Trust Fund Bylaws with the changes.

Councilor Rierson said what was presented is sloppy but we know what we are looking at even through the scribes' errors; he said this supports the council goals, he is comfortable with the changes and he does not feel the need to delay this for clerical changes; he supports the action.

Councilor McKinney said he cannot support this as presented, because the public has not seen all of this regardless if there are scribes' errors or not. He did not feel staff is equipped to undertake the assistance agency this creates and did not feel it is consistent with council goals.

Mayor Andrews also did not support the resolution and would like to have a clean copy. He had concerns with some of the changes and without the benefit of community input he wished to override the motion to approve with a motion to table.

MOTION: Andrews/McKinney to postpone **Resolution No. 2012-2988** establishing policies and procedures for administration of the Affordable Housing Trust Fund Bylaws to the April 16, 2012, meeting. Motion carried (7 Yes/0 No).

X. COUNCIL BUSINESS

TIME – 11:26 PM

Mr. Danicic asked for direction from council for Mrs. Lockwood's request made during public comments this evening for a waiver or reduction of fees.

MOTION: Rierson/Shelton to add an additional 90 day deferral and a recalculation of the fees by staff. Motion carried (7 Yes/0 No).

XI. ADJOURNMENT

The meeting adjourned at 11:34 PM.

ADOPTED by the Newberg City Council this 16th day of April, 2012.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 19th day of April, 2012.

Bob Andrews, Mayor

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: April 16, 2012

Order ___ Ordinance XX Resolution ___ Motion ___ Information ___
No. No. 2012-2752 No.

SUBJECT: Amendment to the Newberg Municipal Code Citizens' Rate Review Committee section allowing utility rates and/or fee increases to be referred to the voters through the State referendum process.

Contact Person (Preparer) for this
Motion: Terrence D. Mahr
Dept.: City Attorney's Office
File No.:

HEARING TYPE: LEGISLATIVE QUASI-JUDICIAL NOT APPLICABLE

RECOMMENDATION:

This is the first reading of the proposed ordinance. The Council needs to discuss, deliberate, and direct the City Attorney's Office to prepare the preferred amendment to the Newberg Municipal Code (code) to allow increases in utility rates and/or fees (rates) to be subject to the referendum process referred to as the State referendum process in accordance with the preferred alternative.

EXECUTIVE SUMMARY:

Note: The executive summary is usually a few paragraphs. This summary is somewhat longer to assist in discussion of the alternatives, as well as the issues involved in this code amendment. Direction to the City Attorney's Office is necessary in order to prepare the appropriate final documents for the second reading.

Executive Summary: The Council had previously discussed some "response" to the recent ballot measure that was defeated in November of 2011. The purpose of this amendment is to authorize a process that would allow increases in rates to be referable to a vote for approval if there was a substantial concern with the increases. Two alternatives are being considered. The first alternative covers any increase. The second alternative allows the referral if the increase exceeds a certain amount. Both alternatives utilize the State referendum process.

Background: Around the state, there has been proposed a number of charter amendments, which, if passed, would require voter approval of all increases in taxes, fees, and charges approved by a City. These provisions have been passed in Sheridan, Damascus, Cascade Locks, and Estacada. The provisions vary in their exact detail. The provisions greatly hamper the City government in operation of its necessary business. In Sheridan, it resulted in costly litigation in order for the City to comply with its obligation, which the City entered into when it borrowed money to construct facilities for its utilities.

At the November 8, 2011, election, the citizens of Newberg defeated a charter amendment, which would have enacted similar provisions requiring voter approval of all increases in taxes, charges, and fees. The Council wishes to respond to the lengthy, costly, and public discussion concerning the cost of government; voter approval of any cost; authority of elected officials to run the City government in a business-like fashion; the ability of the City to provide services to the public; and the obligations of the City through its contractual agreements. The Council desires to provide some alternatives for the electorate of the city so their legitimate concerns may be honored and expressed.

The Council is willing through this amendment to the code to recognize a limit upon its authority. This limit would be exercised through Oregon's traditional nationally recognized Initiative and Referendum process. This code provisions would provide a reasonable alternative to the unworkable provisions of the previously defeated proposed amendment to the City Charter. This alternative would recognize the concern of the citizens when the appropriate number of electorate expresses their concerns through the petition process. The appropriate number would be determined by the established statewide referendum process.

Section 2.15.120 of the code establishes the authority of the Citizens' Rate Review Committee (CRRC). Furthermore, Section 2.15.200(M) of the code states that the rates may be challenged in accordance, "with the initiative and referendum procedures and state law." With the passage of the model charter in 2006, this provision became obsolete.

It should be further noted that in 1995, the code stated that a resolution adopting the rates may be referred to the electors of the city. A petition to refer the resolution must be signed by not less than ten percent (10%) of the electors registered in the city at the time the respective petition is filed, and said petition must be in general conformance with the State of Oregon election laws and/or City of Newberg ordinances governing the referendum petitions.

Section 2.15.200(M) of the code was amended in 2003 to provide that "Challenges shall be made in accordance with the initiative and referendum procedures and state law." Because the ballot measure in 2011 was defeated, under the current the Charter and provision in Section 2.15.200(M), there is a need for the State referendum process to be adopted to facilitate such a challenge.

The model charter provides that the Council exercises its authority through ordinances (legislative), resolutions (administrative), and orders (quasi-judicial). It is clear that the exercise of administrative authority (through approval of resolutions) is not subject to the referendum process under state law. This is because the exercise of administrative authority does not result in municipal legislation. The initiative and referendum process concerns municipal legislation. The Council may specifically allow the referendum process to be used to refer an administrative exercise of authority to the voters for approval. It is not prohibited by the City Charter to allow this to occur.

The Council has discussed two alternatives to meet the concerns of the recent failed ballot initiative. This is the first draft of those two alternatives. Both would be an amendment to the code Section 2.15.200 (M). The first alternative would allow any increase to be referred to the voters. The second alternative would allow the increase over a certain amount to be referred to the voters. The Citizens' Rate Review Committee code provisions are attached to this Request for Council Action. Also attached are two draft ordinances.

Additional Issues: There are certain issues not addressed in either alternative of the amendment. Those issues could be addressed. However, this will cause the amendment to be more complicated and may not be politically palatable. In other words, the more complicated the amendment, the more the public may feel that it is not a legitimate response to the recently defeated ballot measure. The issues not considered are as follows:

1. *Cost of election* – Neither provision provides that the Council could choose to refer an increase once a referral process has the certified number of signatures to a free election. The State election law requires a referendum, once the required number of certified signatures is obtained, to be referred to a certain election in the near future. The amendment could provide that once the referendum petitions have been certified and the proper number of signatures have been obtained, the Council could refer the matter to one of the "free" elections. The "free" elections occur in May and

November of the even-numbered years. This would avoid election costs. However, the increase would not go into effect until the election had taken place and the increases had been approved by a vote of the electorate.

2. *Increases due to debt obligation* – There are certain increases in rates that the City is obligated to make in order to meet its obligation to repay its debt on the utilities. As we know from the Sheridan case, the Court would exempt that increase from a provision requiring voter approval. The amendment to the code could provide that such increases would not be subject to the referendum process. The resolution approving the utility rate increases would need to clearly state what increases are due to those debt obligations.
3. *Review of process* – Neither alternative has a provision that the Council will review this process and determine whether or not it has met the need to respond to the ballot measure. This could be placed in the code or could just be direction to the staff.

FISCAL IMPACT:

The fiscal impact is undetermined. It would cost the City approximately \$8,000.00 to \$10,000.00 for an election if an increase was referred to the voters. This is the election cost charged to the City if it is not one of the “free” elections as indicated above. In addition, the City would have to forego collecting the increased rates while the referendum was pending. If the increase was not approved, the City would not receive the additional revenue from the proposed increases. However, if a petition for a referendum was not circulated or certified, it would not substantially decrease the revenue received due to the delay in the increase in rates.

STRATEGIC ASSESSMENT:

There were a number of citizens who voted for the ballot measure. Passage of such a ballot measure would extremely hamper the ability of the City in carrying out its public business. The attorney for the initiative petitioner for the ballot measure stated that the reason Cities were so opposed to the ballot measure, which required voter approval of all increases was that it brought the Cities to a halt in the conducting of its business. The cost to other Cities that have such ballot measures has been substantial. Such ballot measures also undermine the representative form of government, which the City Charter establishes for the City of Newberg. This response would address the legitimate concerns of the citizens.

EXCERPT from the Newberg Municipal Code

Article III. Citizens' Rate Review Committee

2.15.120 Established.

There is established a citizens' rate review committee ("committee") for the [City](#) of Newberg, Oregon. [Ord. [2585](#), 7-21-03; Ord. [2418](#), 10-2-95. Code 2001 § 32.70.]

2.15.130 Powers and duties.

The committee shall consider the rates for the [city](#) wastewater and water systems, the amount of the stormwater maintenance fee, and other rates and/or fees, at the request of and as assigned by the [city council](#). The committee shall hold public [hearings](#), make recommendations to the [city council](#) regarding the establishment of the rates and fees, reconsider rates and fees that are proposed to be established by the [city council](#), when referred to them for reconsideration, and make other recommendations concerning the operation, maintenance and construction of the wastewater and water systems, stormwater system, and other systems of the [city](#). Such recommendations shall be accompanied by statements of facts as a basis for such recommendation. The committee, once assigned the responsibility for reviewing the rates and fees, may [structure](#) the review process as necessary to offer a recommendation to the [city council](#). The committee shall further have the powers and duties which may hereinafter be assigned to it by the [city council](#). [Ord. [2733](#) Att. A, 2-7-11; Ord. [2585](#), 7-21-03; Ord. [2418](#), 10-2-95. Code 2001 § 32.71.]

2.15.140 Membership.

The committee shall consist of eight members. Seven members shall be residents of the [city](#), one of whom may be a water customer outside of the [city](#) and who would be eligible to vote only on water rate issues. The eighth member shall be the mayor, who shall serve as an ex officio nonvoting member. [Ord. [2685](#), 1-7-08; Ord. [2627](#), 12-5-05; Ord. [2585](#), 7-21-03; Ord. [2418](#), 10-2-95. Code 2001 § 32.72.]

2.15.150 Terms of office and appointment.

Members of the committee shall be appointed by the mayor with the consent of the [city council](#) for a term of three years from the first calendar day of the year. The appointment of some members shall be, other than specified terms, in order to establish an approximately equal expiration of terms each year. All terms will expire as of December 31st of each year except for the first December 31st date following the original appointment of the committee. The term of each member shall continue until such time as their successors are appointed. Committee members may be reappointed to serve a full three-year term or additional three-year terms without limit. [Ord. [2690](#) § 2(C), 2-4-08; Ord. [2585](#), 7-21-03; Ord. [2418](#), 10-2-95. Code 2001 § 32.73.]

2.15.160 Application and qualifications.

A. The [city](#) shall give public notice of any vacancy of the committee and accept such applications for vacancies.

B. The application for membership on the committee shall state the principal occupation of the [applicant](#), the principal residence of the [applicant](#) and give other information and qualifications as the [city](#) may deem necessary.

C. All members shall have their principal place of residency inside the [city](#) limits at the time of their appointment and during the term that they serve on the committee.

D. No member except the mayor shall be an employee, [family](#) members of employees, official or [family](#) member of officials of the [city](#). [Ord. [2585](#), 7-21-03; Ord. [2418](#), 10-2-95. Code 2001 § 32.74.]

2.15.170 Vacancies and removal.

A. Any vacancy on the committee shall be filled by appointment of the mayor with the consent of the [city council](#) for the unexpired term of the predecessor in the position.

B. A member of the committee may be removed by the [city council](#) after [hearing](#) for misconduct or nonperformance of duty.

C. A member who is absent from two consecutive meetings without an excuse as approved by the committee is rebuttably presumed to be in nonperformance of duty and the [city council](#) shall declare the position vacant unless finding otherwise following the [hearing](#). [Ord. [2690](#) § 2(C), 2-4-08; Ord. [2585](#), 7-21-03; Ord. [2418](#), 10-2-95. Code 2001 § 32.75.]

2.15.180 Presiding members.

At the committee's first meeting of the year, the committee shall elect a chair, vice chair and secretary to serve one-year terms. The mayor may serve as chair of the committee. [Ord. [2585](#), 7-21-03; Ord. [2418](#), 10-2-95. Code 2001 § 32.76.]

2.15.190 Meetings.

A. A majority of the voting members of the committee shall constitute a quorum. The committee shall meet first as requested by the [city council](#), with subsequent meetings scheduled by the committee. The chair shall have the authority to set the day and time of the meetings; provided, that the council has requested that the rate and/or fee review process proceed. The chair shall have the authority to cancel meetings of the committee. Meetings of the committee shall be open to the public and subject to the Open Meetings Law. Meetings other than the regularly scheduled meetings may be announced at a prior meeting and thereby made a part of the meeting records.

B. The chairman, upon the chairman's own motion, may, or at the request of three members of the committee, shall, by giving notice to the members of the committee, call a special meeting of the committee for a time not earlier than 24 hours after the notice is given. Notice of a special meeting shall be posted at [City Hall](#) and, to the extent feasible, provided to interested [persons](#) and the local newspaper at least 24 hours prior to the meeting. [Ord. [2585](#), 7-21-03; Ord. [2418](#), 10-2-95. Code 2001 § 32.77.]

2.15.200 Authority.

Once convened, the committee shall have the authority to establish a process for reviewing the water rates, wastewater rates, stormwater maintenance fees, and other fees as assigned by the council. The process for

establishing the rates and fees shall be just and equitable, and set by an administrative process which includes the following:

A. Rates shall be imposed upon all users of the water and wastewater systems, both inside and outside the [city](#), and shall be just and equitable charges for service, maintenance, operation, debt service and reconstruction of the water and/or wastewater system.

B. Fees shall be imposed upon all users of the stormwater system, both in and outside the [city](#), and shall be just and equitable charges for service, maintenance, operation, debt service, and reconstruction of the stormwater system. This review process may be undertaken with either the water rates, wastewater rates, or stormwater maintenance fees, or both the water and wastewater rates together, or all or both rates and fees together.

C. All costs for maintenance, operation, debt service, and reconstruction of the water system and/or wastewater system and/or stormwater system shall be identified by the [city](#) staff. These costs shall be reported to, reviewed, changed, and approved by the budget committee of the [city](#) during the annual budget process, as required by state statute.

D. The [city council](#) shall, as part of the annual budget process, adopt a budget for the maintenance, operation, debt service, and reconstruction of the water system and/or wastewater system and/or stormwater system.

E. Should the budget which the [city council](#) adopts require a change in the rates and/or fees levied and imposed upon all users of the water system and/or wastewater system and/or stormwater system, the [city council](#) shall, by motion at a duly noticed regular council meeting, instruct the committee to develop and identify the rates and/or fees according to a cost-to-serve analysis. The cost-to-serve analysis shall provide a proposal for charges for service for the customer service groups which [use](#) the water system and/or wastewater system and/or stormwater system.

F. The committee, after due deliberation and consideration, shall set a date for a public [hearing](#) to receive input on the proposed rates and/or fees. The public [hearing](#) shall be held prior to a final recommendation to the [city council](#) on the rates and/or fees. The existing rates and/or fees and the new rates and/or fees shall be published in a newspaper and posted in three public places as part of the notice for the public [hearing](#) with the committee. The [hearing](#) shall consist of a presentation and explanation of the rates and/or fees by the [city](#) manager or designee, and an opportunity for users or representatives of users to address the rates and/or fees or other items of concern with relation to the water system and/or wastewater system and/or stormwater system. A written record of the [hearing](#) shall be made and kept for review by the [city council](#).

G. Based on the input from the [hearing](#), its understanding of the needs of the water system and/or wastewater system and/or stormwater system, and any other information it decides to consider, the committee shall recommend the water rates and/or wastewater rates and/or stormwater maintenance fees to be adopted by the [city council](#).

H. The [city](#) manager, or a designee, shall compile the written and/or video record for the [city council](#) to consider as part of the committee's recommendation.

I. Notice of the rates and/or fees that are recommended by the committee shall be published in the newspaper and posted in three public places within the [city](#).

J. The [city council](#) shall hold a public [hearing](#) within 30 days after receiving the committee's recommendation. The public [hearing](#) shall provide an opportunity to comment on the recommended water rates and/or wastewater rates and/or stormwater maintenance fees. The council shall consider the record of the public [hearing](#) held by the committee and may open the matter for additional public input on the proposed rates and/or fees. The [city council](#) shall hear presentations and explanations of the rates and/or fees by the [city](#) manager, or a designee, as part of the public [hearing](#). The [city council](#) may set rates and/or fees which are either equal to or less than those recommended by the committee. The council may adjust the rates and/or fees, but if they are higher than those recommended by the committee, the council must send the proposed rates and/or fees to the committee for reconsideration and [hearing](#).

K. If the rates and/or fees are sent back to the committee for reconsideration, the council shall review the recommendation after the public [hearing](#) by the committee.

L. The council shall then, by resolution, set the water rates, wastewater rates and/or stormwater maintenance fees at an amount that assures the financial self-sufficiency of the systems.

M. Such rates and/or fees set by the council shall not go into effect for a period of at least 30 days from the date of their adoption by resolution. Challenges shall be made in accordance with the initiative and referendum procedures and state law. [Ord. [2585](#), 7-21-03; Ord. [2418](#), 10-2-95. Code 2001 § 32.78.]

2.15.210 Appointments of boards, commissions, and committees.

A. Appointments of members to boards, [commissions](#), and committees are made by the mayor with the consent of the [city council](#) pursuant to the [city](#) Charter, Section 9, titled "Mayor."

B. The qualifications, terms, and other conditions of appointment shall be as specified in the [code](#) or the resolution or document establishing the board, [commission](#), or committee.

C. The appointment process is established by resolution. [Ord. [2690](#) § 1, 2-4-08. Code 2001 § 32.80.]



ALTERNATIVE # 1
(any increase can be referred)
ORDINANCE No. 2012-2752

**AN ORDINANCE AMENDING THE NEWBERG MUNICIPAL CODE
ALLOWING INCREASES IN THE UTILITY RATES AND/OR FEES TO BE
SUBJECT TO REFERRAL TO THE CITY ELECTORATE FOR APPROVAL
THROUGH THE STATE REFERENDUM PROCESS**

RECITALS:

1. Utility rates and/or fees (rates) are reviewed and recommended through the Citizens Rate Review Committee (CRRC) per the Newberg Municipal Code (NMC) Section 2.15.120 – 2.15.210.
2. Rates are set by the City Council per the NMC Section 2.15.200 (L).
3. The Council exercises their administrative authority in setting the rates by approval of a resolution pursuant to the City Charter.
4. It is clear that the exercise of this administrative authority through approval of a resolution is not subject to the referendum process under State law.
5. The Council through this amendment to the NMC is allowing the State referendum process to be used to refer an administrative exercise of authority by the Council to the voters for approval.
6. The State referendum process is the process by which municipal legislation may be referred to the electorate for approval through a petition process, which is part of the Initiative and Referendum process as set forth in the Oregon State Constitution and the Oregon Revised Statutes.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

Section 1 – Amendment to the Newberg Municipal Code. Section 2.15.200 (M) of the MCC is amended to read as follows:

M. *Special provision allowing rates and/or fees set by council to be subject to the state referendum process.* The council by resolution will set the rate and/or fees as provided for in this section. The rates and/or fees are set by the council exercising its administrative authority by approval of a resolution. The exercise of administrative authority is not subject to the state referendum process since it is not municipal legislation. However, the council grants the right to the electorate of the city to refer the resolution that approves any increase in rates and/or fees to the voters of the city for approval. This referral will use the state referendum process including all the rules, regulations, and laws that apply to that process. Such resolution that adopts the approved increase in rates and/or fees will not take effect for at least 30 days from the date of its passage.

Section 2 – Findings of Fact, Rulings, and Reasons for the Amendment. The Council makes the following Findings of Facts, Rulings, and Reasons for this amendment:

1. The passage of a resolution is an administrative action by the council. An administrative action is not referable through the State referendum process. However, the council is allowing this action to be referred through the State referendum process because it is responding to the recently defeated initiative petition ballot measure, which would have required approval of all increases in taxes, charges and fees.
2. The City Charter that establishes how the council exercises its authority does not specifically prohibit the council from authorizing an administrative exercise of authority from being referred to the electorate through the referendum process. Therefore, the council is ruling that it is permissible to refer this administrative exercise of authority through the State referendum process.
3. The Council enacts this amendment to address the legitimate concern of citizens of the city concerning increases in rates.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: _____, 2012.

ADOPTED by the City Council of the City of Newberg, Oregon, this 16th day of April, 2012, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Norma I. Alley, City Recorder

ATTEST by the Mayor this 19th day of April, 2012.

Bob Andrews, Mayor



ALTERNATIVE # 2
*(increases above certain percentage
rate can be referred)*
ORDINANCE NO. 2012-2752

**AN ORDINANCE AMENDING THE NEWBERG MUNICIPAL CODE
ALLOWING INCREASES IN THE UTILITY RATES AND/OR FEES ABOVE A
CERTAIN PERCENTAGE ANNUALLY TO BE SUBJECT TO REFERRAL TO
THE CITY ELECTORATE FOR APPROVAL THROUGH THE STATE
REFERENDUM PROCESS**

RECITALS:

1. Utility rates and/or fees (rates) are reviewed and recommended through the Citizens Rate Review Committee (CRRC) per the Newberg Municipal Code (NMC) Section 2.15.120 – 2.15.210.
2. Rates are set by the City Council per the NMC Section 2.15.200 (L).
3. The Council exercises their administrative authority in setting the rates by approval of a resolution pursuant to the City Charter.
4. It is clear that the exercise of this administrative authority through approval of a resolution is not subject to the referendum process under State law.
5. The Council through this amendment to the NMC is allowing the State referendum process to be used to refer an administrative exercise of authority by the Council to the voters for approval.
6. The State referendum process is the process by which municipal legislation may be referred to the electorate for approval through a petition process, which is part of the Initiative and Referendum process as set forth in the Oregon State Constitution and the Oregon Revised Statutes.
7. It may be necessary for the Council to approve increase rates in order to maintain minimum levels of maintenance and operations for the City utilities. Such increase in rates to maintain these levels of services will not be subject to the referendum process. The Council in this amendment has determined that the annual percent, which is exempt from the referral process, is the amount necessary to maintain that level operations.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

Section 1 – Amendment to the Newberg Municipal Code. Section 2.15.200 (M) of the MCC is amended to read as follows:

M. Special provision allowing increases above a certain percent per year in the rates and/or fees set by the council to be subject to the state referendum process. The council by resolution shall set the rate and/or fees as provided for in this section. The rates and/or fees are set by the council through exercising administrative authority by approval of a resolution. The exercise of administrative authority is not subject to the state referendum process since it is not municipal legislation. However, the council grants the right to the electorate of the city to refer the resolution that approves any increase in rates and/or fees to the voters of the city for approval subject to the provisions set out below. This referral shall use state referendum process including all the rules, regulations, and laws that apply to that process. Such resolution that adopts the approved increase in rates and/or fees will not take effect for at least 30 days from date of passage. Provided that the right of referral is subject to the following conditions:

- (1) Any annual increase in the rates and/or fees that does not exceed _____ percent annually shall not be subject to the referendum process;
- (2) any portion of an annual increase which is greater than _____ percent shall be subject to the right of the electors to refer the approval of that portion of the increase to the voters for approval through the state referendum process as set out above; and
- (3) the resolution setting the increase in rates and/or fees shall designate which portion of an increase if any is subject to the referral process as set out above.

Section 2 – Findings of Fact, Rulings, and Reasons for the Amendment. The Council makes the following Findings of Facts, Rulings, and Reasons for this amendment:

1. The passage of a resolution is an administrative action by the council. An administrative action is not referable through the State referendum process. However, the council is allowing this action to be referred through the State referendum process because it is responding to the recently defeated initiative petition ballot measure, which would have required approval of all increases in taxes, charges and fees.
2. The City Charter that establishes how the council exercises its authority does not specifically prohibit the council from authorizing an administrative exercise of authority from being referred to the electorate through the referendum process. Therefore, the council is ruling that it is permissible to refer this administrative exercise of authority through the State referendum process.
3. The Council finds that it is necessary and in the best interest of the citizens of the city to properly maintain the city utilities. In addition, the utilities must be operated in order to furnish services to the public. The Council establishes a percentage of increase that is a minimum amount that is necessary to maintain the utilities and provide for operation of the utilities. It is in the best interest of the citizens of Newberg to allow a minimal amount of increase in rates. The Council finds that an increase of ___ percent per year meets that need. Such increase shall not be subject to the referral process as above set out

in this amendment.

4. The Council enacts this amendment to address the legitimate concern of citizens of the city concerning increases in rates.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: _____, 2012.

ADOPTED by the City Council of the City of Newberg, Oregon, this 16th day of April, 2012, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Norma I. Alley, City Recorder

ATTEST by the Mayor this 19th day of April, 2012.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: April 16, 2012

Order ___	Ordinance ___	Resolution <u>XX</u>	Motion ___	Information ___
No.	No.	No. 2012-2988		

SUBJECT: Administration of the Newberg Affordable Housing Trust Fund

Contact Person (Preparer) for this Motion:
David Beam, AICP
Dept.: Planning and Building
File No.: Gen File 09-015

RECOMMENDATION: Adopt **Resolution No. 2012-2988**, establishing policies and procedures for administration of the City of Newberg’s Affordable Housing Trust Fund (NAHTF).

EXECUTIVE SUMMARY: At the City Council’s March 19, 2012 meeting, the Council heard Resolution No. 2012-2988, which would establish procedures and policies for the Newberg Affordable Housing Trust Fund. The Council heard an overview of the resolution’s subject matter and received public testimony. Staff and the Council discussed some potential changes to the proposal. Staff has taken those suggested changes by Council and incorporated them into the revised resolution attached to this staff report. Language added to the previous version of the resolution is double underlined and language deleted is indicated with ~~strikeout~~.

At the March 19th meeting, the Council also expressed some other questions and concerns regarding the proposed resolution. The following comments are intended to address those issues.

There were some questions regarding whether or not monies in the NAHTF would be used to support moderate income households in Newberg. Page 5 of the Newberg Affordable Housing Action Plan defines moderate income as “a family making 81% to 100% of the Area Median Income.” Council recently adopted Ordinance No. 2012-2749, creating the NAHTF and new municipal code language. Newly adopted Section 3.35.020(A) of the code states that “The purpose of the Newberg Affordable Housing Trust Fund (NAHTF) is to support the development, preservation, and rehabilitation of housing that is affordable to the citizens of Newberg with incomes that do not exceed 100% of the area median income.” In addition, Section 3.35.020(A) states that the purpose of the NAHTF monies is to “...enable very low, low, and moderate-income families to afford quality housing while paying no more than 30 per cent of gross household income on housing.”

Some Council members were unclear about meaning of the various household income classifications. On page 6 of the Newberg Affordable Housing Action Plan is an example of such a classification program:

2009 MSA Median Income	2009 Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
\$70,000	Moderate	\$49,000	\$56,000	\$63,000	\$70,000	\$75,600	\$81,200	\$86,800	\$92,400
	Low	\$39,200	\$44,800	\$50,400	\$56,000	\$60,500	\$64,950	\$69,450	\$73,900
	Very Low	\$24,500	\$28,000	\$31,500	\$35,000	\$37,800	\$40,600	\$43,400	\$46,200
	Extremely Low	\$14,700	\$16,800	\$18,900	\$21,000	\$22,000	\$24,350	\$26,050	\$27,700

These figures are determined by the U.S. Department of Housing and Urban Development for the Portland metropolitan region and are used by the Housing Authority of Yamhill County. These numbers are updated on an annual basis. The City would use a similar table for administration of the NAHTF, with the numbers updated to the current year.

The Council had a question regarding the use of bylaws in the administration of the NAHTF. The word “bylaws” is not mentioned in the proposed resolution. The resolution presents the policies and administrative procedures in the form of program guidelines, similar to the way those issues are addressed with the City’s Economic Development Revolving Loan Fund.

Concern was expressed that private landlords receiving rehabilitation loan assistance would just raise rents when improvements were made, making the dwellings less affordable. In the long term, this may be true. However, Section 7.3.c(6) of the proposed resolution states that following regarding landlords receiving these types of loans: “The applicant shall enter into an agreement guaranteeing the dwellings will only be occupied by families or individuals meeting the income guidelines for the loan term.” This requirement will ensure that the dwellings will remain affordable in the short term.

Finally, staff has added a new section to the resolution. The recommended Section 9 states that funds in the current budget labeled “Housing Authority Loans” shall be transferred in a new department code created for monies used in the NAHTF. These funds are from a federal grant received by the city many years ago to assist with local housing rehabilitation efforts. This action will in effect act as seed money for the NAHTF.

Adding this at this time will allow it to be reflected in the upcoming budget. This new section also states any new revenue intended for the NAHTF must be approved by the City Council.

FISCAL IMPACT: The city’s current budget includes a line item of \$70,217 that is intended to be used as seed money for the NAHTF. It is staff’s understanding that this money is derived from grant funds obtained by the city many years ago from the federal government with the express purpose to assist with affordable housing. Currently, there are no restrictions on the use of these funds. Staff is recommending that these funds be assigned a new department code so as to more easily tract the use of these monies within the NAHTF. Staff recommends that the FY 12-13 city budget reflect this use of these monies within the NAHTF.

Other potential sources of revenue for the fund are expected to be brought forth to the council for consideration in the future. Some staff time will be needed to administer the fund.

Many of the dollars from the Fund are intended to leverage other resources, thereby hopefully increasing the impact of local efforts toward making housing more affordable.

STRATEGIC ASSESSMENT: Affordable housing continues to be an important issue for Newberg. The Affordable Housing Action Committee has spent many hours analyzing mechanisms by which the city may help mitigate this problem. Their recommendation to the council to administer the Newberg Affordable Housing Trust Fund as described in this proposed resolution deserves serious consideration.



RESOLUTION No. 2012-2988

A RESOLUTION ESTABLISHING POLICIES AND PROCEDURES FOR ADMINISTRATION OF THE CITY OF NEWBERG'S AFFORDABLE HOUSING TRUST FUND

RECITALS:

1. On May 4, 2009, the Newberg City Council adopted Resolution No. 2009-2843 accepting the Newberg Affordable Housing Action Plan.
2. On February 23, 2011, the Newberg Affordable Housing Action Committee recommended that the city council adopt an affordable housing trust fund and adopt policies and procedures for administration of that fund.
3. On March 5, 2012, the Newberg City Council approved Ordinance No. 2012-2749 establishing the Newberg Affordable Housing Trust Fund, to keep our community diverse and healthy by facilitating the production and preservation of affordable housing throughout Newberg.
4. The policies and procedures for administration of the Newberg Affordable Housing Trust Fund establish eligible uses, eligible applicants, method by which funds are awarded, and selection criteria.
5. The city council understands the changing nature of the housing market and corresponding housing needs. Therefore, the council has established flexible policies and procedures for administering the Newberg Affordable Housing Trust Fund (NAHTF) that can respond to changing market conditions and opportunities.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

SECTION 1. Purpose

- 1.1 The purpose of the Newberg Affordable Housing Trust Fund (NAHTF) is to support the development, preservation, and rehabilitation of housing that is affordable to the citizens of Newberg with incomes that do not exceed 100% of the area median income. The NAHTF will have a dedicated source of revenue to provide ongoing funding for housing projects or programs that address the housing needs of these Newberg residents. The primary purpose of the NAHTF is to encourage the development, preservation, and rehabilitation of housing for homeownership or rent, at a cost that will enable very low, low and moderate-income families to afford quality housing while paying no more than thirty percent of gross household income on housing.
- 1.2 To promote the rehabilitation, preservation and production of quality, well-designed rental and ownership housing, the NAHTF will award funds to community development partners that are furthering the NAHTF mission. It is expected that the local contributions made through Newberg's

Affordable Housing Trust Fund will maximize the leveraging of state and federal funds, as well as encourage private sector investment in affordable housing.

- 1.3 Understanding the high cost of housing regionally, it is evident that very low, low, and moderate-income households are not being served by the housing market. To address the disparity between the cost of housing and the means of resident household to afford housing, the Newberg Affordable Housing Trust Fund aims to provide direct financial support to projects that retain or increase the supply of needed housing for households earning less than 100% the area median income as defined by the Newberg planning and building director, using the best available data.
- 1.4 The administrative procedures associated with the Newberg Affordable Housing Trust Fund, including fund administration, determination of eligible applicants, eligible uses and activities, award preferences, eligibility criteria, award process, and selection criteria are hereby established.

SECTION 2. Eligible Applicants

- 2.1 The Newberg Affordable Housing Trust Fund is structured to ensure that many different types of organizations and persons are eligible to receive funds.
- 2.2 Eligible applicants include governmental subdivisions, community development corporations, local housing authorities, community action agencies, community-based or neighborhood-based non-profit housing organizations, other non-profit organizations, for-profit entities and private employers, and private landlords.

SECTION 3. Eligible Uses and Activities

- 3.1 Newberg Affordable Housing Trust Funds shall support the creation or preservation of housing that is affordable to households with incomes that do not exceed 100% of the area median income, as defined by the Newberg planning and building director, using the best available data.
- 3.2 Newberg Affordable Housing Trust Funds will be limited to those activities that create, preserve or acquire housing within the Newberg city limits.
- 3.3 Housing developments financed by the NAHTF which receive subsidy, financing, tax credits or other assistance under a State or Federal housing programs, may contain market rate units insofar as permissible under those programs and/or to the extent that they are necessary to support the creation of and/or ongoing sustainability of the affordable housing units in the development. However, Newberg Affordable Housing Trust Funds may not be used to support such market rate units.
- 3.4 Affordable housing units developed utilizing subsidy from the Newberg Affordable Housing Trust Fund shall comply with the income and housing cost limits established by Newberg Municipal Code Section 15.242.030, as amended, and as restricted by a contract prepared by the City of Newberg. The city council reserves the right to make exceptions to the standards established by Newberg Municipal Code Section 15.242.030 for proposed projects it wishes to support and deems further the provision of affordable housing within the community.
- 3.5 The Newberg Affordable Housing Trust Funds can be provided as either a grant or a loan depending on the project or program receiving funding. To retain a significant degree of flexibility, the eligible uses have a broad application including the following:

- 3.5.a Acquisition and construction of new affordable housing.** Eligible acquisition and construction costs include reasonable costs associated with building or land purchase, including but not limited to:
- Purchase price
 - Option costs
 - Financing fees
 - Appraisal costs
 - Closing costs
 - Interest
 - Inspection fees
 - Title insurance
 - Relocation costs
 - Architectural/engineering fees
 - Permit fees
 - System development charges
 - Construction costs
- 3.5.b Conservation** of energy through the use of “green” technologies provided that the benefits of the energy savings is passed on in the form of reduced costs to the qualified occupants of the affordable housing.
- 3.5.c Land banking** to include the purchase of land to be dedicated toward the development of affordable housing in the near or long-term.
- 3.5.d Predevelopment activities** undertaken by a community development organization in support of the development of affordable housing including planning, architectural services, engineering services, landscape design, legal services, surveys, appraisals, site clearance and demolition, environmental clearance, permit application fees and system development charges. Grant funding for these types of activities may be required to convert to a loan if the project receives full funding. For-profit developers are not eligible to apply for Newberg’s Affordable Housing Trust Funds to assist with predevelopment costs.
- 3.5.e Bridge loans** to assist in development of affordable housing (for rental or owner occupancy). Bridge loans are intended to provide funding to permit housing projects to proceed in advance of the availability of permanent project funding. Bridge loan funding is available for acquisition or construction activities.
- 3.5.f Capacity building** for non-profit affordable housing providers in the form of direct grant awards to fund administration of an affordable housing project or program.
- 3.5.g Rehabilitation and emergency repairs** as part of an established program to secure units as affordable or to provide direct benefits to existing very low to moderate income households. Eligible rehabilitation and emergency repair costs include but are not limited to:
- Architectural/engineering fees
 - Consultations
 - Construction costs

- Relocation costs
- Hazardous materials abatement including lead based paint noticing consistent with the Federal Lead Safe Housing Regulations HUD requirements at 24 CFR §35

Rehabilitation loans to the owners of owner-occupied dwellings are not eligible uses of the NAHTF.

- 3.5.h Direct benefits** to very low to moderate income households through an established program including down payment assistance, rental assistance, mortgage foreclosure prevention, emergency housing vouchers, homeownership training, renter education, or other programs intended to increase housing opportunities for Newberg’s low to moderate income residents.
- 3.5.i Transitional and emergency housing** for homeless individuals and families through an established program to move people toward self-sufficiency.
- 3.5.j Educational programs and services** for potential home owners and renters.
- 3.5.k Other uses as deemed appropriate** by the Newberg City Council as supporting the development or preservation of affordable housing within the City of Newberg.

SECTION 4. Program Goals

- 4.1** To help maintain the effectiveness and long-term viability of the NAHTF, preferences will given to the provision of loans over grants. General criteria of project selection are found in Section 8 of this resolution. In no particular order, the following preferences are provided as general guidance for future applicants for Newberg Affordable Housing Trust Funds.
 - 4.1.a** Developments that produce new affordable housing units. New affordable housing units shall include housing units constructed where none had existed previously, abandoned or fire-damaged residential units to be returned to residential use, and non-residential or mixed-use projects in non-residentially-zoned property. Any designated new affordable housing units shall be secured as affordable for future use through the recording of an appropriate legal instrument approved by the city attorney.
 - 4.1.b** Developments that provide new affordability. New affordability refers to existing housing where a new level of affordability is provided that does not currently exist. This could occur in rental or ownership housing where the number of affordable units is increased, where a portion of existing units will be made affordable to households at income levels substantially lower than the units previously served, or where the term of affordability on the units will be extended for a period of at least twenty-five (25) years.
 - 4.1.c** Developments that improve the energy efficiency and safety of existing affordable housing stock while maintaining affordability of the units.
 - 4.1.d** Developments of housing utilizing the land trust model to secure property and perpetual affordability.
 - 4.1.e** Developments that include joint ventures between multiple non-profit developers and/or for-profit developers, working in partnership, to complete an affordable housing project.

- 4.1.f Developments that include a joint venture between service providers and non-profit affordable housing developers to create projects that contain additional benefits to low income individuals in the development of the project, or additional services for the resident upon completion.
- 4.1.g Developments that incorporate the use of “green” building materials, use of energy-efficient appliances, low-water use landscaping, and reduced storm water runoff. In addition, developments that incorporate building design and operational factors that minimize energy use and resource consumption as well as avoid indoor health impact.
- 4.1.h Developments that include affordable units for the disabled and the homeless.
- 4.1.i Projects that propose long-term affordability.
- 4.1.j Projects that are sponsored by non-profit organizations.
- 4.1.k Projects that use private funding sources and State funding sources to leverage the least amount of Newberg’s Affordable Housing Trust Funds.

SECTION 5. Fund Administration

The Newberg Affordable Housing Trust Fund (NAHTF) originated through the direction of the Newberg City Council.

- 5.1 The City of Newberg acts as fiduciary agent and administrator of the funds. The city reserves the right to contract certain tasks to most effectively and efficiently achieve its administrative duties.
- 5.2 Funds dedicated to the Newberg Affordable Housing Trust Ffund shall be exclusively reserved to support the eligible uses activities identified in Section 3, and shall not be used for the general operation of the city.
- 5.3 The City of Newberg shall accept requests for funding from the NAHTF’s Time Sensitive Loan Program from eligible applicants at anytime in order to accommodate affordable housing project opportunities that are time sensitive. Coordination with other private and government funding application timelines will help ensure that NAHTF funds are best applied to leverage additional resources in support of the housing projects. Project submittals deemed not time-sensitive will not be approved, but the applicant will be encouraged to submit their proposal to the annual request for proposals (RFP) funding process under the NAHTF’s Competitive Awards Program. Also, eligible applicants may submit proposals to the NAHTF’s Rental Rehabilitation Loan Program at any time.
- 5.4 The City of Newberg shall annually issue a notice of funding available (NOFA) to announce the availability of funds. The City shall also issue a request for proposals (RFP) for affordable housing projects that are not time sensitive.
- 5.5 As a target in any given year, up to 80 percent of the NAHTF will be available for project loans and up to 5 percent will be available for project grants. The remaining 15 percent of the NAHTF will be available for project contingencies through grants and/or loans.

- 5.6 In any given year, at least 50% of the available funds within the NAHTF shall be available for use through the competitive awards program. In any given year, the city council may make an exception to this standard to take advantage of affordable housing opportunities.
- 5.7 The City of Newberg shall form an Aaffordable Housing Commission (AHC) that consists of three members appointed by the Mayor with the consent of the city council. Membership of the commission should reflect representative broad interests regarding affordable housing in the community. The commission shall review applications for Newberg Affordable Housing Trust Funds to determine project eligibility and evaluate the applications based on the selection criteria. The commission shall provide recommendations to the city council who shall make final award decisions. In addition, the commission shall meet annually ~~twice a year~~ to prepare the NAHTF's annual NOFA and RFP for consideration of approval by the city council. Otherwise, the commission will meet as necessary during the year.
- 5.8 Newberg Affordable Housing Trust Funds will be allocated in a manner consistent with the threshold criteria provided Section 8, and consistent with state and local public contracting law.
- 5.9 Grant monies received into the NAHTF will have five percent of those monies reserved for administration.

SECTION 6. Match Requirements

- 6.1 The Newberg Affordable Housing Trust Fund is intended to support the development of needed housing. In addition, the City of Newberg believes that projects can become stronger and more successful through the partnership of many organizations. Therefore, the following match requirements apply to projects utilizing grants from the NAHTF.
- 6.1.a The Newberg Affordable Housing Trust Fund grant contribution shall not exceed 50% of the total project or program cost. Required match can be met utilizing government funding, direct contribution from the applicant, private donations, and the contribution of land, materials or labor to the project.
- 6.1.b In the case that land previously owned by the applicant is considered as required match, the value of the land shall be determined by a city approved certified appraisal completed by the applicant or real market value from the Yamhill County assessor office provided by the applicant, unless otherwise directed in Oregon Revised Statute or Newberg Municipal Code.
- 6.1.c The valuation of land, and available equity to be considered as matching funds, shall be verified by the city prior to the disbursement of an NAHTF grant when its value is considered as required matching funds.
- 6.1.d Donated materials and labor, which are proposed as required match through the development of a project shall have their value estimated at the time of application. The actual value of these contributions is subject to verification by the city at completion of the project.
- 6.1.e Award recipients shall provide verifiable accounting for donated labor and materials, when such was necessary to satisfy the NAHTF match requirements.

- 6.1.f** If a recipient of an NAHTF grant has been deemed by the city to have failed to have fulfilled all the necessary grant award match requirements, the city may require a full or partial repayment of any NAHTF grants awarded to a project.

6.2 Approved loans provided by the NAHTF may cover up to 100% of a project's costs.

SECTION 7 Allocation of Funds

The Newberg Affordable Housing Trust Fund is structured to allow flexibility for the city and housing providers. The establishment of three distinct and separate award processes is intended to provide for both consistency and flexibility of the NAHTF program. Annually, the city shall issue a notice of funding availability (NOFA), announcing the availability of funds in the following year and the types of programs. The city shall issue the NOFA for the year through publication in the Newberg Graphic and on the city's website. The NOFA shall be issued on or near July 1st of the year.

First, there is the competitive awards program. Annually, the city will ~~may~~ issue a request for proposals for affordable housing projects of a non-time sensitive nature. Proposals awarded funding through the RFP process shall be done through a competitive basis. Loans and/or grants may be awarded through this program.

Second, there is the time sensitive program. Through this program, applicants requesting funding from the NAHTF may submit requests at any time in the year to accommodate affordable housing project opportunities that are time sensitive. Coordination with other private and government funding application timelines will help ensure that NAHTF funds are best applied to leverage additional resources in support of the housing projects. Loans and/or grants may be awarded through this program.

Third, there is the rental rehabilitation program. This program is intended to assist private property owners with rental rehabilitation projects. Applications for this program may be submitted at any time and need not be considered under the competitive awards program. Applicants seeking funding assistance must be willing to enter into a contractual agreement with the city that will ensure the future affordability of the project units for a specific period of time. Only loans will be awarded through this program.

The distribution of any and all NAHTF funds through competitive or non-competitive awards, as described in Sections 7.1 through 7.3, will be in accordance with state and local public contracting laws.

7.1 Competitive Awards Program

The City of Newberg has a limited amount of Newberg Affordable Housing Trust Funds to use each year in comparison to the scope of the housing needs within the community. As a result, it is essential that the funds are used to meet the city's priorities in an efficient and cost-effective manner. To this end, a competitive award process uses a set of award criteria to evaluate proposals received through a request for proposals (RFP) process in terms of how they address the specific priorities outlined in the annual RFP.

The steps for making the competitive grant awards or loans are outlined below.

- 7.1.a** The City of Newberg may issue an RFP Request for proposals on an annual basis depending on availability of funds, providing applicants with a minimum of 45 days to respond to the request. The RFP shall be issued on or near July 1st of the year.

- 7.1.b City staff shall assess the project proposals to determine if the eligibility criteria are met and shall develop a recommendation to provide to the Newberg Aaffordable Housing Commission and the city council.
- 7.1.c The Newberg Aaffordable Housing Commission will provide applicants the opportunity to make a presentation on their project proposal and provide community members the opportunity to comment by holding a public meeting.
- 7.1.d The Newberg Aaffordable Housing Commission will develop an award recommendation to the city council using the NAHTF criteria to determine which projects best meet the city's spending priorities. Each application will be rated on a numeric scale as established in the annual RFP for each criterion of selection (Section 8).
- 7.1.e The Newberg city council shall make a final decision on the award of Newberg Affordable Housing Trust Funds.
- 7.1.f The City of Newberg shall prepare an agreement between the city and the award recipient. The agreement shall outline the conditions of award and shall be executed prior to the disbursement of any Newberg Affordable Housing Trust Funds.
- 7.1.g An award granted to an applicant may be rescinded by the city if the applicant does not initiate the activities identified in response to the RFP in advance of the City's issuance of another RFP.

7.2 Time Sensitive Loan Program

The City of Newberg recognizes that the nature of affordable housing development is often opportunity driven and time sensitive. Through this program, applications may be submitted at any time during a given year. When applications are received, the city shall review them to determine if the applications meet the city's threshold criteria. If the criteria are met, then the funds may be awarded to, or reserved for, the applicant. Funds available through this process are awarded on a first come, first served basis.

- 7.2.a Project Eligibility. Projects are eligible to utilize funds for activities listed in Section 3.
- 7.2.b Project Security. Applicant must demonstrate and commit sufficient collateral to ensure the security of the loan.
- 7.2.c Loan Terms. ~~Loan terms will be customized to fit the particular needs of the project.~~
 - (1) Loan amounts will be determined by the proposed project need and amount available within the NAHTF.
 - (2) The standard interest rate is two percent (2%) below the prime rate.
 - (3) The standard term of the loan is two years.
 - (4) The applicant shall pay a loan processing fee equal to one percent (1%) of the loan or \$100.00, whichever is greater.
 - (5) Standard loan terms may be modified by approval of the City Council.
 - (6) The applicant shall enter into an agreement guaranteeing the dwellings will only be occupied by families or individuals meeting the income guidelines.
- 7.2.d Process.

- (1) The city manager shall appoint a loan officer to process loan applications.
- (2) The loan officer will prepare application specifications.
- (3) The loan officer will review applications for eligibility, and qualify applicants as either standard or preferred applicants. The loan officer may establish a priority for awarding of qualified loans.
- (4) Prior to awarding any loan, the application will be forwarded to the Newberg Affordable Housing Commission for consideration of recommendation for approval by the Newberg city council.
- (5) The loan officer shall prepare the necessary documents and agreements to execute and provide for repayment of the loan.

7.3 Rental Rehabilitation Loan Program

7.3.a Purpose

The purpose of the rental rehabilitation loan program is to loan ~~housing trust funds~~ NAHTF monies to local landlords so they can rehabilitate dwellings and make them safe and decent for rental to low or very low income families.

7.3.b Eligibility

- (1) The dwelling must be within the Newberg city limits.
- (2) The dwelling must be rented to low or very low income families or individuals, according to income guidelines established by the Affordable Housing Commission. Preference will be given to units to be rented to very low income families or individuals.
- (3) Repairs shall improve the overall livability of the dwelling by addressing health and safety issues and by making the home more energy efficient and affordable. Priority is placed on the repairs needed to make the home safe and to prevent further deterioration and escalated costs if left unattended. Typical examples of these projects include new roofs, new windows, new electrical wiring, heating system repair/replacement, and utility repairs.
- (4) The applicant shall demonstrate sufficient equity in the property ~~home~~ and sufficient ability to repay the loan.
- (5) The applicant shall demonstrate that the rehabilitation could not be accomplished using conventional loan programs.
- (6) Preference shall be given to landlords who live in Newberg or the Newberg area, and who own 10 or fewer rental units, and who own the property outright or have substantial equity in the property.

7.3.c Loan Terms

- (1) Loans are available in amounts ranging between \$5,000.00 and \$15,000.00. This amount may be increased up to \$25,000.00 if the need for repairs is justified and adequate equity is established.
- (2) The standard interest rate is two percent (2%) below the prime rate.
- (3) The standard term of the loan is seven years.
- (4) The applicant shall pay a loan processing fee equal to one percent (1%) of the loan or \$100.00, whichever is greater.
- (5) Standard loan terms may be modified by approval of the city council ~~affordable housing commission~~.
- (6) The applicant shall enter into an agreement guaranteeing the dwellings will only be

occupied by families or individuals meeting the income guidelines for the loan term.

7.3.d Process

- (1) The city manager shall appoint a loan officer to process loan applications.
- (2) The loan officer will prepare application specifications. The loan officer will receive applications by a date specified in the notice of funding availability. The loan officer will accept applications after that date if funding remains available, and may establish a waiting list for applications in future funding cycles.
- (3) The loan officer will review applications for eligibility, and qualify applicants as either standard or preferred applicants. The loan officer may establish a priority for awarding of qualified loans.
- (4) Prior to awarding any loan, the application will be forwarded to the Affordable Housing Commission for consideration of recommendation for approval by the Newberg city council.
- (5) The loan officer shall prepare the necessary documents and agreements to execute and provide for repayment of the loan.
- (6) The applicant shall complete all repairs within one year of loan award

SECTION 8 NAHTF Competitive Grant or Loan Award Threshold and Selection Criteria

8.1 The project is considered an eligible use or activity under Section 3, and benefits households earning less than 100% the area median income (threshold verification).

8.2 If the project is related to the provision of technical assistance to affordable housing providers, the use of Newberg Affordable Housing Trust Funds functions to increase the capacity of the organization to specifically address the mission of the NAHTF (threshold verification).

8.3 Newberg Affordable Housing Trust Funds shall be limited to the minimum amount necessary to complete the project. The lower the percentage of NAHTF funds requested, relative to the full project costs, the higher ranking the project shall be given.

8.4 The project addresses the unmet housing needs as identified in the Housing Element of the Newberg Comprehensive Plan.

8.5 The lower the income level that is targeted for the benefitting households, the higher the ranking the project shall be given.

8.6 The project provides new affordable housing, or new affordability, through retention or rehabilitation of existing housing, within the city. The greater the number of units provided, the higher the ranking the project shall be given.

8.7 The project retains the affordable housing units as affordable. The longer period of time the units remain affordable, the higher ranking the project shall be given.

8.8 The project addresses energy conservation through the integration of green building technologies in new construction, or achieves greater energy efficiency through rehabilitation of existing housing.

8.9 The project maximizes partnerships in the community (volunteers, in-kind contributions, cash contributions, multiple organization involved, etc).

- 8.10** The project utilizes already existing resources in effective and innovative ways. The project shall not duplicate service provided by another organization.
- 8.11** The agency submitting the proposal has the capacity to carry out the project and has had demonstrated successes completing projects of similar scope.
- 8.12** The budget and timeline are thorough and realistic.
- 8.13** The project is ready for implementation.
- 8.14** If the project includes the acquisition of property, the identified property is currently available for acquisition and the applicant has secured either a purchase option or letter of interest from the seller. If the applicant is also applying for federal funding (i.e. Community Development Block Grants or HOME) they should carefully review procurement requirements and limitations before obtaining a purchase option.
- 8.15** The relocation of existing residents will be minimized, and when necessary, the applicant has included accurate relocation assistance costs as part of the project pro forma.
- 8.16** The proposal demonstrates that Newberg Affordable Housing Trust Funds are the most appropriate funding source, and necessary, for the project.
- 8.17** Additional selection criteria may be developed and included in the annual RFP to best direct Newberg Affordable Housing Trust Funds toward an identified priority need. Numeric rankings for each of the selection criteria shall be incorporated into the annual RFP.

Section 9 Fund Revenue

9.1 The city manager is directed to create a new budget department code within the existing Fund 14 for monies within the NAHTF. Monies within the budget under line 14-4120-602000, Housing Authority Loans, shall be placed in this new department code.

9.2 All new revenue brought into the NAHTF shall be done so with the approval of the city council.

- **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 17, 2012.

ADOPTED by the city council of the City of Newberg, Oregon, this 16th day of April, 2012.

Norma I. Alley, City Recorder

ATTEST by the mayor this 19th day of April, 2012.

Bob Andrews, Mayor

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: April 16, 2011

Order ___	Ordinance ___	Resolution <u>XX</u>	Motion ___	Information ___
No.	No.	No. 2012-2999		

SUBJECT: Amend the downtown design guidelines to include a new inverted-U bicycle rack design in four colors

**Contact Person (Preparer) for this Motion: Jessica Nunley, AICP
Dept.: Planning & Building
File No.: G-11-004**

RECOMMENDATION:

Adopt **Resolution No. 2011-2999** amending Resolution No. 2005-2606 to add an inverted-U bicycle rack design in four colors to the adopted downtown design guidelines.

EXECUTIVE SUMMARY:

The City currently has two approved bike rack designs for the downtown area (the C-3 zone) – the post and ring design, and the old-fashioned bike design, as shown on the right. The Newberg City Council adopted these designs and other streetscape amenity design guidelines through Resolution No. 2005-2606 in December, 2005. There is currently a handful of the post and ring style racks scattered throughout the downtown area, and none of the old-fashioned style bicycle racks. However, we often still see bicycles parked against street trees or signs in the downtown area, leading staff to believe that perhaps we don’t have enough, or not the right type of bicycle parking racks available.



One way to remedy this issue is to provide more bicycle parking racks of a type that bicyclists prefer to use.



One rack design commonly used and liked by bicyclists is the simple inverted-U rack, as shown on the left. Bicyclists like the U rack design because it allows for two points of contact with the bicycle, making it more stable than the post and ring design. It also allows users to securely lock their frame and wheel together with a standard and commonly used U-lock, and allows for two bikes per U rack. In addition, the simple design has no hard edges to mar or damage bicycle frames. There are many advantages to the inverted-U rack, and its simple and unobtrusive design would fit in well throughout the downtown area while at the same time encouraging bicycle ridership by providing adequate and functional parking spaces.

The Newberg Downtown Coalition created a suggested downtown color palette for merchants and business owners with the goal of “creating harmony between downtown buildings that will be aesthetically pleasing¹.” In accordance with that goal, the inverted-U racks should conform to the suggested color palette. This is an easy way to bridge the gap between form and function as well by providing bicycle parking that is also aesthetically pleasing and brightens up the downtown area. Staff suggests using the

¹ <http://newbergdowntown.org/potential/paint-palette/>

following four colors from the color palette (based on paint colors from Sherwin Williams): Verdant (green), Earthen Jug (reddish orange), Loch Blue (blue), and Blackberry (dark purple), as shown below.



Sample U-Rack Design



Proposed Colors

FISCAL IMPACT:

There will be no fiscal impact from amending Resolution No. 2005-2606 to include an inverted-U rack in the downtown design guidelines.

STRATEGIC ASSESSMENT:

Providing adequate bicycle parking throughout the downtown is a great way to promote bicycle ridership in our community. Residents and students will be more likely to make short trips by bicycle to the downtown area to eat and shop if there is adequate secure bicycle parking available. By providing functional racks in a variety of colors, we can bridge the gap between form and function and provide some aesthetically pleasing and functional “flair” for the downtown. Also, the project will help meet the Newberg Downtown Coalition’s goal of harmonious design throughout downtown by making use of their recommended color palette. Finally, proactively encouraging bicycle ridership in our community also meets the intent of the City Council’s recently adopted Mission and Vision statements that seek to promote Newberg as a healthy community.



RESOLUTION No. 2011-2999

A RESOLUTION AMENDING RESOLUTION NO. 2005-2606 TO INCLUDE AN INVERTED-U BICYCLE RACK IN FOUR COLORS TO THE ADOPTED DOWNTOWN STREETScape AMENITIES DESIGN GUIDELINES

RECITALS:

1. The Newberg City Council adopted downtown streetscape amenities design guidelines through Resolution No. 2005-2606 on December 5, 2005. Those guidelines included a post and ring style bicycle rack and an old fashioned style bicycle rack. There are currently a handful of the post and ring style bicycle racks in the downtown area, and none of the old fashioned style bicycle racks.
2. The inverted-U style bicycle rack is functional, secure, and commonly used and liked by bicyclists. Providing the inverted-U racks in four colors, chosen from the Newberg Downtown Coalition color palette, will provide bicycle parking that is aesthetically pleasing and brightens up the downtown area.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

Resolution No. 2005-2606 is hereby amended to include an inverted-U style bicycle rack in four colors chosen from the Newberg Downtown Coalition color palette to the list of recommended downtown streetscape amenities. The other listed recommended downtown streetscape amenities of Resolution No. 2005-2606 shall remain in force.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 17, 2012.

ADOPTED by the City Council of the City of Newberg, Oregon, this 16th day of April, 2012.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 19th day of April, 2012.

Bob Andrews, Mayor

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: April 16, 2012

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2012-3000

SUBJECT: A hardship request for water service to the customers of the existing Foothills Water Company Water District.

Contact Person (Preparer) for this Motion: Jay Harris, City Engineer
Dept.: Public Works Department - Engineering
File No.:

RECOMMENDATION: Staff recommends approval of **Resolution No. 2012-3000** approving the water hardship request by the Foothills Water Company water district.

EXECUTIVE SUMMARY: On February 6, 2012, City staff met with Joe Kavale, a representative for the four property owners of the Foothills Water Company (FWC) water district, to discuss the attached written request, shown as Exhibit "A", for water service to the existing residential homes currently served by the district. A vicinity map is attached, as Exhibit "B", identifying the location of the properties at 3620, 3629, 3705, and 4000 NE Aspen Way.

Action items from the meeting included the following:

- The four property owners will submit a signed petition to the city requesting connection to the city system;
- The City will evaluate the existing system and meters as to the maintenance needs and operational deficiencies and install individual meters at each property;
- The City will create temporary water accounts for the four water users and read the existing private water meters at each property as well as the existing master meter at Bell Road; and
- Water will temporarily be provided to the four properties through the master meter until the Newberg City Council takes formal action on the request. Billing to the property owners will be at the Springs Customer Class fixed and volumetric charges.

Newberg Municipal Code of Ordinances Chapter 13.15 authorizes the Newberg City Council to approve hardship connections to the City's water system provided certain criteria are met. Staff prepared written findings relative to the criteria and those findings are attached as Exhibit "C".

After written agreements are signed and recorded by each property owner, staff will prepare a separate resolution for consideration by council, terminating the agreement between the City of Newberg and the Foothills Water Company and rescinding Resolution #0012 dated May 6, 1963.

FISCAL IMPACT: The property owners will pay for all costs associated with this hardship request, including but not limited to, installing new individual meters, removing the current master meter, any necessary repairs to the mainline, and expenses related to granting public waterline easements as needed. In addition, the four water customers will be charged monthly billing rates under the Spring Customer Class.

The FWC paid system development charges at the time of the installation of the master meter; therefore, staff requests Council waive the water system development charges for each of the new connections.

STRATEGIC ASSESSMENT: The FWC has been purchasing water from the City and supplying their water district customers via a master meter. Installing individual meters to these same customers would have no impact to the system. If Council determines that a hardship case exists, it would not set a precedent or impair the Council's ability to judge future hardship requests.



RESOLUTION No. 2012-3000

A RESOLUTION AUTHORIZING A HARDSHIP REQUEST FOR WATER SERVICE TO THE CUSTOMERS OF THE EXISTING FOOTHILLS WATER COMPANY WATER DISTRICT

RECITALS:

1. The Foothills Water Company (FWC) was formed by Resolution No. 1963-0012 adopted on May 6, 1963.
2. The FWC purchased water from the City of Newberg and sold the water to their customers over the decades.
3. As of January, 2012, the operator of the Foothills Water Company discontinued service to their customers.
4. On February 6, 2012, the remaining four property owners served by the FWC submitted a written request, shown as Exhibit "A" and by this reference is hereby incorporated, for water service from the City of Newberg for the four existing residential homes currently served by the water district, as shown on Exhibit "B" and by this reference is hereby incorporated.
5. Newberg Municipal Code Chapter 13.15 authorizes the Newberg City Council to approve hardship connections to the City's water system provided certain criteria are met. Staff prepared written findings relative to the criteria and those findings are attached as Exhibit "C" and by this reference hereby incorporated.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council of the City of Newberg hereby approves the water hardship petition request, shown in Exhibit "A" and by this reference is incorporated, to the properties at 3620, 3629, 3705, and 4000 NE Aspen Way, which is shown on the vicinity map attached as Exhibit "B" and by this reference incorporated.
2. The City Council hereby adopts staff findings attached as Exhibit "C" and by this reference incorporated.

3. The Newberg City Council does hereby authorize the city manager to execute an agreement with the property owners to be recorded with the Yamhill County Clerk. The attached findings in Exhibit "C" provide a generalized list of items to be included in the agreement.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 17, 2012.

ADOPTED by the City Council of the City of Newberg, Oregon, this 16th day of April, 2012.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 19th day of April 2012.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

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

EXHIBIT A

February 6, 2012

Honorable Bob Andrews
Mayor of the City of Newberg
414 E. First ST.
PO Box 970
Newberg, OR 97132

Mr. Dan Danicic
City Manager of the City of Newberg
414 E. First ST.
PO Box 970
Newberg, OR 97132

Gentlemen;

We the undersigned four property owners hereby petition the City of Newberg to supply water to the meters that serve the houses on the properties listed. Water to these dwellings was supplied in the past by the Foothills Water District, a separate billing entity served by Oliver Springs. With the departure of Mr. and Mrs. Meyer, who have been shepherding Foothills Water District for years, the District ceases to exist. With nowhere else to turn, we the remaining users ask that the City of Newberg continue to supply water through Oliver Springs, but instead of reading the "Master" meter, establish new accounts and read the meters at each of the four properties.

Sincerely,



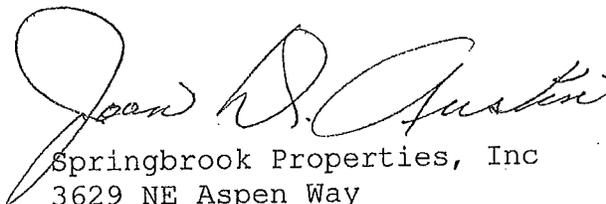
E. A. Meyer
4000 NE Aspen Way
Newberg, OR 97132



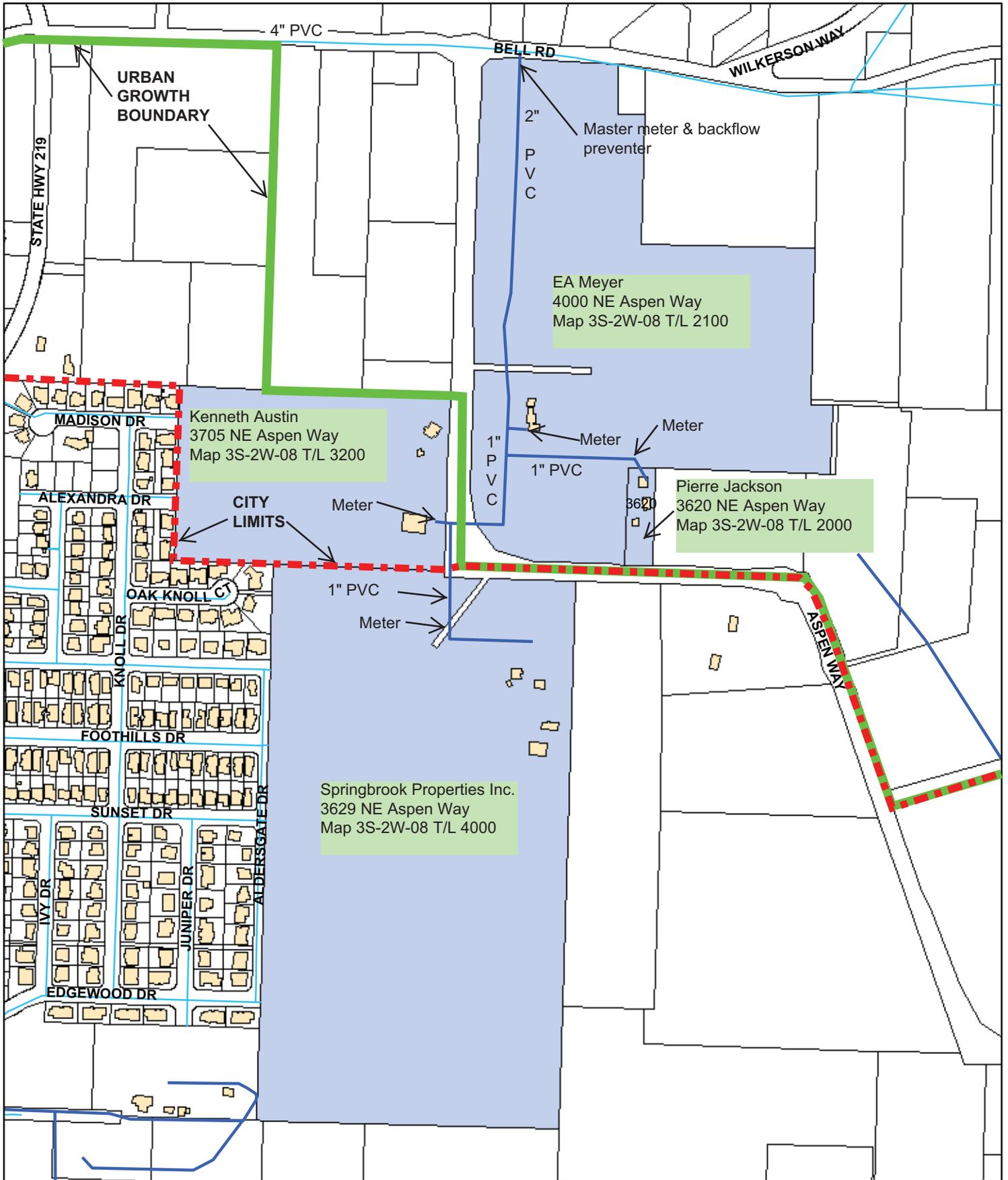
Pierre (Pete) Jackson
3620 NE Aspen Way
Newberg, OR 97132



G. Kenneth Austin III
3705 NE Aspen Way
Newberg, OR 97132



Springbrook Properties, Inc
3629 NE Aspen Way
Newberg, OR 97132



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EXHIBIT B Vicinity Map

LEGEND:

- Urban Growth Boundary
- - - - - City Limits
- Water Line

EXHIBIT C
To Resolution No. 2012-3000

WRITTEN FINDINGS
Foothills Water Company Hardship Request

TITLE 13 PUBLIC UTILITIES AND SERVICES

13.15.110 Additional users outside city.

A. Notwithstanding the provisions of this chapter relative to water service to users outside the city limits, no new or additional water connection for the purpose of providing water to a user situated outside the corporate limits of the city shall be permitted, save and except the connections as are in use or are ready for use on or before the last-mentioned date.

Response: No new or additional water service connections are proposed as the users are current customers of the Foothills Water Company which has purchased water from the city since forming in May of 1963 by City of Newberg Resolution No. 0012. The four remaining Foothills Water Company customer connections are all currently in use.

Out of the four customers of the Foothills Water Company, the EA Meyer and Pierre Jackson parcels are outside the city limits and urban growth boundary. The property owned by Kenneth Austin is outside of the city limits but within the urban growth boundary; and the Springbrook Properties Inc. parcel is within the city limits. Refer to Exhibit B, Vicinity Map for the location of the four properties.

B. No new water users shall be connected to group customer lines, and no new single residential users shall be connected after the last-mentioned date, it being the intention of this amendment that the city shall not serve or supply water to any additional users outside the city limits save and except those then in service or ready for service.

Response: This section does not apply as the users received service from the Foothills Water Company prior to January 1, 1988 and are already in service.

C. The words "ready for use" and "ready for service," as used in this section, shall be taken to mean that the building or structure wherein the water is to be used shall have been constructed up to the point that all framing and roofing and all exterior siding, windows and exterior doors are completed, and all plumbing is roughed in and ready for installation of plumbing fixtures.

Response: This section does not apply as the users are already in service via the Foothills Water Company.

D. The city recorder is directed to require the individual, firm or organization in charge of each group customer line outside the corporate limits of the city to file with the recorder a sworn statement setting forth the name and address of each water user served through

their respective group customer lines and presently connected therewith.

Response: Each user from the Foothills Water Company will have a separate water account with the city and receive individual utility billings. The Foothills Water Company group customer water supply line from the master meter is proposed to be owned and maintained by the city. A recorded agreement for each property owner will be prepared by the city attorney outlining the public improvements that may be needed and the necessary public waterline easements, as described in section 13.15.120.D.5 below.

E. The recorder may require such additional information as the recorder shall see fit to be furnished in connection with the reports. The city recorder shall report to the city council all group customer lines and all responsible individuals who shall not furnish such a statement and report within the time hereinabove required.

Response: Reporting will not be needed as the number of allowed connections will remain the same as currently served by the Foothills Water Company.

F. All additional connections to the group customers' lines after the effective date of the ordinance codified in this chapter, whether or not in service, shall be promptly reported to the recorder when ready for service. [Ord. 1398, 5-17-65. Code 2001 § 52.11.]

Response: No additional connections are proposed to the Foothills Water Company group customer line.

13.15.120 Exceptions due to hardships.

An exception to NMC 13.15.100 may be granted by the city council in cases of hardship. The following process shall be used in determining whether the exception shall be granted, and the criteria shall be strictly applied with the burden of proof upon the applicant:

A. Eligibility. The applicant must meet the following criteria:

1. The new or additional water connection can be used only to supply water to an existing structure and will not be used to allow any new development.

Response: No development is proposed. The existing Foothills Water Company connections are to existing structures.

2. Annexation of the property upon which the structure is located is not immediately practical.

Response: Annexation of the parcels owned by EA Meyer and Pierre Jackson into the city is not possible at this time as the properties are located outside of the urban growth boundary. Refer to Exhibit B, Vicinity Map for a location of the properties.

Annexation of the parcel owned by Kenneth Austin into the city is possible, as the property is located within the urban growth boundary. The parcel owned by Springbrook Properties Inc., is within the City of Newberg.

The recorded agreements described in 13.15.120.D.5 below will set forth terms for annexation of each property into the city.

B. Hardship Determination. A request for a new or additional water connection due to hardship shall be accompanied by evidence of the following:

1. A genuine hardship exists due to quality and/or quantity of water for domestic consumption.

Response: The existing properties would have a genuine hardship if they were disconnected from the springs system and required to install wells, as the underground aquifers in the vicinity of the four properties has very poor water quality, and the State of Oregon has restricted the quantity of water that can be pumped from the groundwater aquifer in the area due to declining groundwater levels.

2. All other alternatives have been investigated and are not economically feasible.

Response: The existing water supply infrastructure was installed to provide adequate water service to the four properties. Drilling of groundwater wells and installing pumps, electrical systems, and tanks, or connection to other city waterlines nearby, would not be economically feasible when compared to the continued use of the existing facilities.

3. The dwelling to be served is in close proximity of existing services, either private or public, and the granting of the additional connection would not overburden existing lines, either private or public, or overburden the city's water supply.

Response: The addition of the properties to the city springs water system will not overburden the city's water supply or system, as the properties are currently using city water through the Foothills Water Company supply system.

C. Application for Hardship. A request in letter form for a hardship exception to NMC 13.15.100 shall be made to the city council. The request shall be accompanied by a statement and evidence to be used in the determination. The request shall be reviewed and a recommendation made to the city council by the public works department prior to the city council's consideration of the matter. A granting of the request for an exception can be made by the city council; provided, that all the conditions stated in subsection (B) of this section do exist.

Response: Exhibit A, submitted to the City on February 6, 2012, is the signed petition prepared by the property owners requesting connection to the City water system. The statement and evidence for use in the determination was discussed in a meeting with Joe Kavale and City Staff on 2-6-12. The staff recommendation is to approve the water hardship request by the Foothills Water Company water district. All of the conditions listed in subsection (B) above have been met.

D. Conditions of Hardship. Any exception granted shall be subject to the following conditions:

1. The owner of the property shall agree to pay the full cost of extending services to the parcel with all services meeting city standards and including all water connection fees and water system development charges.

2. The owner of the subject property agrees to annex to the city at such time as annexation is legally possible and is requested by the city. At the time of annexation, the property owner shall pay all system development charges then in effect, except wastewater, which shall be assessed in accordance with Chapter 13.10 NMC.

3. Water shall be for domestic purposes only and no water granted under this exception shall be permitted for agricultural use.

4. A written agreement as to the conditions under which the exception was granted shall be recorded on the Yamhill County deed records with the applicant paying all fees.

5. The city council may waive all or any portion of the city system development charges as it feels is in the best interest of the city. [Ord. 2666, 3-6-07; Ord. 1912, 7-3-78. Code 2001 § 52.12.]

Response: Upon council approval of the hardship request, the city attorney, in coordination with the city engineer and city manager, will prepare a written agreement for signing and recordation by each property owner. The written agreement will include, but is not limited to, items such as:

- a. Dedication of public water easements for maintenance access, as needed.
- b. Reimbursement to the city for water meter installation and waterline system repair costs.
- c. Non-remonstrance agreements by the property owner to the sale/transfer of the spring system from the city ownership to ownership by a separate water district or other agency.
- d. Water shall be used for domestic purposes.
- e. Other written agreement items that relate to the expansion of the existing domestic use, future connection to the city well field water supply system, water rate fixed and volume charges, etc.

It is requested that council waive the system development charges for the four individual meter installations as the charges were paid at the time of installation of the Foothills Water Company master meter.

13.15.130 Water service for public entities inside urban areas and boundaries.

The city council shall have sole authority to grant water service to public entities including, but not limited to, School District 29Jt and Chehalem park and recreation district, for property which is located within the urban growth boundary and/or the urban reserve area of the city. Property to receive service shall be for the public's use and enjoyment. The city council shall have the authority to require the public entity receiving utility service to comply with any conditions the city council may deem appropriate at the time the water service is granted. [Ord. 2483, 7-7-97. Code 2001 § 52.13.]

Response: This code section is not applicable as the properties requesting the hardship are not public agencies.

13.15.140 Water connections outside city.

A. Additional water connections are allowed to residents outside the city that meet the following conditions:

1. They were in existence as of January 1, 1988, or the property owner had requested a water connection to the property for the purposes of a residence before January 1, 1988, and desires the water connection for the purposes of establishing a residence; and

Response: The water connections to the properties were in existence before January 1, 1988 through the Foothills Water Company.

2. They will be served through a water district; and

Response: The connections are currently served through a water district, the Foothills Water Company, Resolution #0012 adopted on May 6, 1963, which allowed for the provision of city water to the Foothills Water Company. For health reasons, the current operators of the Foothill Water Company, Ernest and Barbara Meyers, are seeking to dissolve the Foothills Water Company. Due to the limited number of connections, it is suggested by staff that the city prepare and record contracts with each property owner as described in 13.15.120.D.5 above, and then under a separate resolution repeal Resolution #0012 which will discontinue the city contract with the Foothills Water Company.

3. A new agreement between the water district and the city will be established; and

Response: If the hardship request is granted by council, staff will establish a new agreement with each of the four property owners.

4. The properties upon which the residences are located agree to annex to the city at the appropriate time and at the request of the city; and

Response: As previously mentioned, the Springbrook Properties Inc. parcel is currently within the city limits, the Kenneth Austin parcel is outside of the city limits but within the urban growth boundary, and the EA Meyer and Pierre Jackson parcels are outside of the city limits and urban growth boundary.

The recorded agreement described in 13.15.120.D.5 above will include a provision that the property annex to the city at the appropriate time and at the request of the city.

5. The water to be used is for domestic purposes only; and

Response: The recorded agreement described in 13.15.120.D.5 above will include a provision that the water is to be used for domestic purposes only.

6. The water district makes a joint application with the property owner on which the residence is located for the new water connection.

Response: These connections currently exist through the Foothills Water Company. The joint application for service by the water district and the property owner will be replaced by the recorded agreement described in 13.15.120.D.5 above, if the hardship request is approved by council.

B. Each water district that desires any new connections will enter into an appropriate agreement between the water district and the city governing the use, connections and maintenance of the water system. The agreement, among other things, may provide for an engineering study for the water district system to assure that the system complies with OAR Chapter 333, concerning public water systems.

Response: Upon approval of the hardship request by council and recordation of agreements between the property owners, the City of Newberg will maintain the system in conformance with State Standards. A part of the recorded agreement described in 13.15.120.D.5 above will include reimbursement to the city for water meter installation and waterline system repair costs.

C. All system development charges and other charges as provided for in the ordinances of the city shall be applicable to the new connections; provided, however, that the city manager has authority to waive, reduce, or otherwise change the systems development charge to the water district pursuant to the agreement between the water district and the city; and provided further, that in no event will the agreement provide for service development charges less than the charge for in-city connections.

Response: It is requested that council waive the system development charges for the four individual meter installations as the charges were paid at the time of installation of the Foothills Water Company master meter.

D. This policy shall be in effect regardless of any conflicting provisions of NMC 13.15.010 through 13.15.130. The purpose of this policy is to facilitate the establishment of proper agreements and policing of connections within the water districts. Any provision of NMC 13.15.010 through 13.15.130 that is in conflict with the water policy shall be deemed to have been repealed. Any provision of the sections which can be read to not be in conflict with the water policy shall be enforced. The city wishes that this policy act as an interim policy to facilitate reaching agreement with the water districts it serves. This matter shall be brought back before the city council within six months of the date of passage for review. [Ord. 2264, 6-20-89; Ord. 2247, 10-3-88. Code 2001 § 52.14.]

Response: An interim agreement is not needed in this situation. As a part of council approval of this hardship request, staff will prepare and record written agreements with each of the four property owners that will identify the policies and provisions of connecting to the city system. If for some reason a property owner chooses not to execute the written agreement, staff will return to council to discuss the provisions of the agreement.

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