



**CITY COUNCIL AGENDA
MAY 5, 2014, 7:00 PM
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

Mission Statement

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

Vision Statement

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

I. CALL MEETING TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. CITY MANAGER'S REPORT

V. PUBLIC COMMENTS

(30 minutes maximum, which may be extended at the Mayor's discretion, with an opportunity to speak for no more than 5 minutes per speaker allowed)

VI. COUNCIL APPOINTMENTS

Consider a motion appointing Crystal Garcia to the Library Board serving a term expiring June 30, 2015, and Corina Kanen to the Library Board serving a term expiring June 30, 2018. (Pgs. 3-4)

VII. CONSENT CALENDAR

1. Consider a motion adopting **Resolution No. 2014-3129** directing staff to withdraw Newberg's current Urban Growth Boundary/Economic Opportunity Analysis application from Department of Land Conservation and Development. (Pgs. 5-16)
2. Consider a motion adopting **Resolution No. 2014-3130** authorizing the city manager pro tem to execute an intergovernmental agreement with the city of Salem for the treatment and disposal of wastewater treatment sludge. (Pgs. 17-24)
3. Consider a motion adopting **Resolution No. 2014-3135** granting a twelve-year agricultural lease to Harold Medici of land on the city's Oliver Springs property. (Pgs. 25-34)

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

4. Consider a motion approving the March 3, March 4, March 17, and April 7, 2014, city council meeting minutes. (Pgs. 35-54)

VIII. PUBLIC HEARING

1. Consider a motion adopting **Resolution No. 2014-3131** adopting new monthly water rates, effective January 1, 2015. (Pgs. 55-62)
(Administrative Hearing)
2. Consider a motion adopting **Resolution No. 2014-3132** adopting new monthly wastewater rates, effective January 1, 2015. (Pgs. 63-64)
(Administrative Hearing)
3. Consider a motion adopting **Resolution No. 2014-3133** adopting new monthly stormwater rates, effective January 1, 2015. (Pgs. 65-66)
(Administrative Hearing)
4. Consider a motion adopting **Resolution No. 2014-3134** adopting new monthly springs water rates, effective January 1, 2015. (Pg. 67)
(Administrative Hearing)

X. COUNCIL BUSINESS

XI. EXECUTIVE SESSION

Executive Session pursuant to [ORS 192.660\(2\)\(h\)](#) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed – Villa Road Sidewalk.

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 business 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 4:30 p.m. on the preceding Wednesday. Written testimony submitted after that will be brought before the Council on the night of the meeting for consideration and a vote to accept or not accept it into the record.

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

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 5, 2014

Order ____ No.	Ordinance ____ No.	Resolution ____ No.	Motion <u>XX</u>	Information ____
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SUBJECT: Appointments to the Newberg Public Library Advisory Board

Contact Person (Preparer) for this
Motion: Leah M. Griffith, Library Director
Dept.: April 11, 2014
File No.:

RECOMMENDATION:

Approve the appointments by Mayor Andrews of **Crystal Garcia**, to Position #1 (May 5, 2014 to June 30, 2015, to complete the term of Kathleen Jones) and **Corina Kanen** to Position #4 (term July 1, 2014 to June 30, 2018) to the Newberg Public Library Advisory Board.

EXECUTIVE SUMMARY:

The library advertised two openings on the library board during February and March with an article in The Newberg Graphic, postings at the library and city hall, announcements on the library and city's websites and in the library newsletter. The positions were posted early in the year to combine filling the position for resigning member Kathleen Jones and the normal cycle of a position opening on July 1st.

Two applications were received by the deadline of April 4, 2014.

The board then proceeded to interview the two candidates: **Crystal Garcia** is an employee of the Sherwood Public Library and has a master's degree in Library Science. She has lived in Yamhill County her entire life and in Newberg for the last four years. She is interested in connecting the Latino community to the library as well as bring her passion for libraries to this volunteer position. **Corina Kanen** has lived in Newberg most of her life. She's been involved with Newberg Old Fashioned Festival as a committee member and a princess. She's served the Hoover-Minthorn House and participated with the Newberg Historical Society. She is a life-long library user and would bring her interest and enthusiasm to the board as well as her volunteer experience.

Following deliberations, the Board determined that **Crystal Garcia** and **Corina Kanen** would both be excellent members of the board. They "flipped a coin" to determine who would be recommended for which position.

The Board voted to recommend Mayor Andrews appoint **Crystal Garcia** to Position #1 (May 5, 2014 to June 30, 2015, to complete the term of Kathleen Jones) and **Corina Kanen** to Position #4 (term July 1, 2014 to June 30, 2018) to the Newberg Public Library Advisory Board.

FISCAL IMPACT: None

STRATEGIC ASSESSMENT:

It is vital for the Library to have a complete library board to advise on policies and issues.

Press Release for Library Board Opening (posted in February-March 2014)

The City of Newberg is seeking applicants to fill two positions on the Newberg Public Library Board.

The Board is an advisory group composed of five community members who meet monthly to discuss and take action on items affecting library service.

There are two positions available. Both positions require residency within the city limits of Newberg. One is for a four year term from July, 2014 to June, 2018. The second is to complete the term of a member who resigned due to health reasons. This position is from May, 2014 to June, 2015 and is eligible for reappointment.

The Board will be developing the newest library's strategic plan as their primary focus in 2014-15 and also recommend policies and rules for the governance of the library.

Applications for the position are available online at www.newberglibrary.org, or at City Hall and the Library. Please return applications to the Newberg Public Library or the City Recorder at Newberg City Hall by **Friday, April 4, 2014, 4:30 pm.**

Candidates will be interviewed by the Library Board on **Thursday, April 10th** in the evening. The Board will recommend a candidate to the Mayor and the recommended candidate will be required to attend the Council meeting on **Monday, May 5th at 7 pm** for appointment. Appointments to the Library Board are made by the Mayor with the approval of the City Council. For further information contact Library director, Leah Griffith at 537-1256 or leah.griffith@newbergoregon.gov

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 5, 2014

Order ____ No.	Ordinance ____ No.	Resolution <u>XX</u> No. 2014-3129	Motion ____	Information ____
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SUBJECT: A Resolution to withdraw Newberg's current UGB/EOA application from DLCD

Contact Person (Preparer) for this
Motion: Jessica Pelz, AICP
Dept.: Planning & Building
File No.: UGB-09-001

RECOMMENDATION:

Adopt Resolution No. 2014-3129, authorizing withdrawal of Newberg's urban growth boundary and economic opportunities analysis application from the Department of Land Conservation and Development (DLCD) review process.

EXECUTIVE SUMMARY:

Newberg has worked closely with DLCD staff over the past several years to craft an updated Economic Opportunities Analysis (EOA) and a corresponding industrial urban growth boundary amendment (UGB) to mitigate the city's deficit of industrial land. The City Council adopted the most recent version of the EOA, UGB, and related amendments in May, 2013, with Ordinance No. 2013-2761, and the city sent the application to DLCD for review in August, 2013. In December 2013, DLCD referred the city's application to the Land Conservation and Development Commission (LCDC) for their review, and LCDC held hearings on the amendments on 2/13/14 and 3/14/14. DLCD staff has recommended that LCDC remand Newberg's application on 12 points, which are shown in Exhibit "A". Staff believes DLCD's recommended remand of Newberg's EOA and industrial UGB amendment is at odds with the city's research, adopted documents, and begins to set an impossibly high bar for local governments to meet. Newberg has until mid-May to respond to LCDC with the city's course of action: (1) enter mediation with objectors (primarily 1000 Friends of Oregon/Friends of Yamhill County; (2) accept LCDC's remand order; (3) appeal LCDC's decision to the Court of Appeals; or (4) withdraw our application and re-strategize.

Background & Process Summary

In 2010, city council adopted Ordinance No. 2010-2723 to adopt the revised EOA, which was subsequently appealed to the Land Use Board of Appeals (LUBA) and ultimately to the state Court of Appeals. In 2011, the Court of Appeals remanded the EOA relating to population forecasting coordination issues with the county, and they issued a new opinion in their ruling about how to determine site suitability characteristics. This ruling was especially significant because it gave specific direction on how to interpret the terms "typical" and "necessary" that are used throughout the rules (OAR 660-009-0005, OAR 660-009-0015, statewide planning goal 14) and were at issue on appeal. LUBA ruled that "site characteristics are properly viewed as attributes that are (1) typical of the industrial or employment use and (2) have some meaningful connection with the operation of the industrial or employment use." (*Friends of Yamhill County v. City of Newberg*, Or LUBA (August, 2010)). The Court of Appeals affirmed LUBA's decision, and stated the following:

"In that statutory and regulatory context, we agree with LUBA that 'site characteristics' need not be 'indispensable' to a particular use in order to be 'necessary for a particular industrial or other employment use to operate.' The intent of Division 9 is to ensure that

there is an 'adequate supply of land for economic development and employment growth in Oregon,' OAR 660-009-0000, which is vital to the health, welfare, and prosperity of the state. ... That overriding intent to allow and plan for anticipated economic growth – in part, through the identification of 'site characteristics' that make the land 'suitable' to meet the needs of anticipated growth – suggests something other than petitioners' strict 'indispensability' test that would take into consideration only those 'site characteristics' without which particular industry and employment uses could not operate. Rather, the planning scheme (based on projections and economic trends) suggests, as LUBA adopted, a more pragmatic approach toward accommodating economic growth: That 'necessary' site characteristics are those attributes that are reasonably necessary to the successful operation of particular industrial or employment uses, in the sense that they bear some important relationship to that operation.” (Friends of Yamhill County v. City of Newberg, Or App (February 16, 2011)).

This ruling gave the city the ability to craft specific site suitability characteristics for industrial land in accordance with the rules. This is extremely important to comprehensive planning as Goal 14 (Urbanization, which governs UGB expansions) allows local governments to specify characteristics for land to be suitable for an identified need. If this were not the case, we would be required to take in land only according to the Goal 14 factors, which would require us to always take in exception land and marginal land, which in most cases would be unsuitable for industrial or commercial land due to size, location, topography, access, etc.

The city's revised EOA contains Newberg's site suitability characteristics along with cited research meant to address the court ruling on “typical of the use” and “meaningful connection”. The EOA is a fundamentally important document to allow the city to move forward with meeting Goal 9 (Economy) and to eventually expand the UGB for employment land.

Staff's recommendation is to withdraw Newberg's application for the revised EOA, industrial UGB, and related amendments from DLCD/LCDC. There is a high likelihood of having our EOA and industrial site suitability characteristics negatively affected by either the remand or mediation at this point.

FISCAL IMPACT:

No immediate fiscal impact. Long range planning processes such as this can cost the city money for outside consultants and attorneys throughout the process, and we have already been working on this project for well over five years. Withdrawing the city's application at this time could enable us to take a step back on the legal process and work on things in-house.

STRATEGIC ASSESSMENT:

The city has put many hours and dollars into this process and it's important to preserve the work that has been done thus far to respond to the court's remand of Newberg's EOA. Staff remains committed to striving to meet Newberg's mission and vision statements of creating a healthy community where citizens can work, play, and grow. That goal may be better served at this time by stepping back from the legal process we have become immersed in, reviewing our options, and proceeding in a strategic manner.

**A RESOLUTION AUTHORIZING STAFF TO WITHDRAW NEWBERG'S
APPLICATION FOR THE SOUTH INDUSTRIAL URBAN GROWTH
BOUNDARY AMENDMENT, REVISED ECONOMIC OPPORTUNITIES
ANALYSIS, AND RELATED AMENDMENTS FROM THE DEPARTMENT OF
LAND CONSERVATION AND DEVELOPMENT**

RECITALS:

1. City Council adopted Ordinance No. 2013-2761 in May, 2013, which adopted revised findings in support of the south industrial urban growth boundary amendment (UGB), revisions to the Economic Opportunities Analysis (EOA), amendments to the comprehensive plan and transportation system plan, and repealed certain ordinances.
2. The city submitted the UGB application to the Department of Land Conservation and Development (DLCD) in August, 2013. DLCD referred Newberg's application to the Land Conservation and Development Commission (LCDC) in December, 2013. LCDC held hearings on Newberg's UGB application on 2/13/14 and 3/14/14. DLCD staff has recommended that LCDC remand Newberg's application on multiple points.
3. Many of the proposed remand points are centered on the information in Newberg's EOA. Statewide Planning Goal 9 (Economy) requires cities to adopt EOAs to guide long-term economic development. State rules allow local governments to specify site characteristics necessary for land to be suitable for employment land. The Land Use Board of Appeals and Oregon Court of Appeals recently ruled on how to determine site suitability characteristics in the court cases *Friends of Yamhill County v. City of Newberg*, OR LUBA (August, 2010) and *Friends of Yamhill County v. City of Newberg*, Or App (February 2011).
4. Newberg's revised EOA contained cited research from other cities, published studies, reports, and other documents meant to address the court's ruling. DLCD's proposed remand order undermines the court's ruling by setting an impossibly high bar for local governments to meet with regard to determining site suitability characteristics and "proof" of what is "necessary" and "typical" for industries.
5. If Newberg were to accept the proposed remand, there is a high likelihood the EOA would be significantly negatively affected, which would hinder future long-term planning efforts. By choosing to withdraw the entire application from DLCD, Newberg can take a step back from the legal process, examine the options, and choose the right path to enable healthy long-term planning for the city's future.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Staff is hereby authorized to withdraw Newberg's application for the south industrial urban growth boundary amendment, revised Economic Opportunities Analysis, and related amendments from the Department of Land Conservation and Development.
2. Exhibit A, DLCD second supplemental report to LCDC, dated March 7, 2014, and Exhibit B, timeline of events related to the Newberg South Industrial UGB Amendment, dated March 27, 2014, are hereby attached and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 6, 2014.

ADOPTED by the City Council of the city of Newberg, Oregon, this 5th day of May, 2014.

Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this 8th day of May, 2014.

Bob Andrews, Mayor



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



March 7, 2014

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Carrie MacLaren, Deputy Director
Rob Hallyburton, Community Services Division Manager

SUBJECT: Agenda Item 13, March 13-14, 2014, LCDC Meeting

CITY OF NEWBERG – URBAN GROWTH BOUNDARY AMENDMENT SECOND SUPPLEMENTAL REPORT

I. SUMMARY

The Land Conservation and Development Commission (commission) conducted a hearing on February 13, 2014, to consider a referral from the director of the Department of Land Conservation and Development (department) of an amendment to the Newberg urban growth boundary (UGB) submitted by the City of Newberg (city) and Yamhill County. The commission received oral argument from the city and several objectors, deliberated, and continued the hearing to its March 13-14, 2014 meeting. This report addresses issues raised at the hearing, other items in objections, exceptions, and materials submitted after the February 13, 2014 hearing that the commission has not yet considered.

A. Staff Contact Information

If you have questions about this agenda item, please contact Angela Lazarean, Mid-Willamette Valley Regional Representative, at (503) 934-0056 or angela.lazarean@state.or.us.

B. Recommendation

The department recommends the commission remand the Newberg UGB amendment submittal for further development of the record and analysis. The specific recommendations are provided below, with changes to the recommendation in the Staff Report indicated by underscore for additions and ~~overstrike for deletions~~.

The department recommends the commission instruct the city, on remand, to:

1. Demonstrate that the following “site characteristics” identified by the city pursuant to OAR 660-009-0015(2) and OAR 660-024-0060(5) are meaningfully connected with the operation of a target industry or a group of target industries with compatible operational requirements, or consider the site and area needs during the analysis of alternative expansion areas under the Goal 14 location factors:

~~Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.~~

Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

Exclude sites that, for community centers, abut residential neighborhood on more than 50 percent of the site perimeter unless effective topographical or road buffers are present or planned.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within one-quarter mile.

Exclude [study areas] that are not predominantly less than 5 percent slope within buildable areas.

2. Demonstrate that the following “site characteristic” identified by the city pursuant to OAR 660-009-0015(2) and OAR 660-024-0060(5) is typical of and meaningfully connected to the operation of a target industry or a group of target industries with compatible operational requirements or consider the site and area needs during the analysis of alternative expansion areas under the Goal 14 location factors:

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

-
3. Explain why target industrial uses must be in close proximity to an arterial street or state highway and not a collector.
 4. Provide adequate evidence regarding the number of industrial sites needed during the planning period.
 5. Include the content required in OAR 660-009-0015(3) in the employment land inventory.
 6. Provide information regarding why the vacant A-dec site was not included in the buildable lands inventory.
 7. Provide information regarding whether a portion of the Springbrook District Village area is designated for non-commercial uses and how the land it was accounted for in the employment land inventory.
 - ~~8. Explain how the determination of the capacity of the existing UGB to accommodate employment growth considered employment growth on fully developed land.~~
 8. Clarify that the Zimri Road area (Site VI) is not adjacent to commercially zoned land, and provide adequate justification as to why this site cannot reasonably accommodate industrial uses, or consider it in the Goal 14 analysis of alternative locations to accommodate industrial land needs under OAR 660-024-0050(4).
 9. Adequately justify why the portion of South Springbrook Road outside the existing UGB (Subarea 12) is unsuitable for industrial use or consider the area in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
 10. Adequately justify why Sites 8 and 9 (Newberg-Dundee corridor) are unsuitable for industrial use or consider them in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
 11. Consider the Waste Management site vacant in the employment land inventory.
 12. Supplement the analysis of alternative expansion areas with an adequate factual base to demonstrate the Goal 14 location factors have been considered and balanced.

II. RECORD

The materials before the commission are:

1. The written record submitted by the city (listed in the department's January 23, 2014 staff report at p. 14)
2. Objections to the submittal submitted by:

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- a. Kathleen Carl
 - b. Shirley Cooper
 - c. Lee M. Does
 - d. Friends of Yamhill County and 1000 Friends of Oregon (Friends objection)
 - e. Ranee Salmonsson, and
 - f. Grace Schaad
3. The department's January 23, 2014 staff report to the commission (Staff Report)
 4. Exceptions to the Staff Report:
 - a. City of Newberg (Newberg exception)
 - b. Friends of Yamhill County and 1000 Friends of Oregon (Friends exception)
 5. The department's February 10, 2014 supplement staff report (Supplemental Report)
 6. List of questions presented to the commission by the department at the February 13, 2014 hearing
 7. Newberg's February 20, 2014 response to issues raised at the LCDC hearing (Newberg response)
 8. Lee M. Does February 26, 2014 rebuttal to Newberg response
 9. Friends of Yamhill County and 1000 Friends of Oregon February 27, 2014 rebuttal to Newberg response (Friends rebuttal)

All of these materials are hyperlinked above and available collectively at http://www.oregon.gov/LCD/Pages/newberg_ugb.aspx.

III. SITE CHARACTERISTICS

The city's use of site characteristics for limiting its consideration of land for UGB expansion has been a central issue in the objections to the submittal, and in the commission's initial hearing. The commission discussed to what extent its decision is bound by the opinion of the Land Use Board of Appeals (LUBA) and subsequent decision by the Court of Appeals in an earlier appeal of Newberg's Economic Opportunities Analysis (EOA).¹ Specifically, the commission discussed the appropriate interpretation of when a characteristic of a site is "necessary" for the site to be suitable for the intended use or for the intended use to operate.

To review, the relevant rule regarding application of site characteristics to a UGB amendment is OAR 660-024-0060(5):

"If a local government has specified characteristics such as parcel size, topography, or proximity that are *necessary for land to be suitable for an identified need*, the local government may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298." (Emphasis added.)

¹ *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5 (2010) *aff'd* 240 Or App 738 (2011). Note that the hyperlinks are to electronic versions of the opinions.

**Timeline of events related to the
Newberg South Industrial UGB Amendment
March 27, 2014**

12/4/2003	City Council establishes the Ad Hoc Committee on Newberg's Future, and asked them to make recommendations on how the city should provide for future industrial and other types of development.
4/2004 – 6/2005	Ad Hoc Committee on Newberg's Future holds 25 meetings and two open houses. Working with consultants, the committee develops projections for employment land and other land needs. The committee considers a number of options for growth.
7/21/2005	Ad Hoc Committee on Newberg's Future delivers their report "Recommendations on Newberg's Future." The Committee recommends that the South Industrial area be included in the UGB to meet 20 –year industrial land needs, and that additional land be included in an urban reserve to meet land needs through 2040.
8/1/2005	City Council adopts Resolution No. 2005-2590, directing staff to undertake activities needed to implement the recommendations of the Ad Hoc Committee on Newberg's Future.
11/21/2005	City Council adopts Ordinance No. 2005-2626, adopting industrial and other land needs.
1/3/2006	City Council adopts Ordinance No. 2006-2635, adopting an economic opportunities analysis
2/7/2007	The County Commissioners approve a Measure 37 Claim for the Gaibler property, enabling them to develop a rural residential subdivision on the property.
8/5/2007	City Council adopts Ordinance No. 2007-2673, authorizing a development agreement with the Gaiblers, agreeing that the city would pursue a UGB amendment and annexation for their property in exchange for the Gaiblers agreeing to an industrial designation instead of developing the property as residential.
7/2/2008	City Council adopts Ordinance No. 2008-2698, including the South Industrial area and other land into the Urban Reserve area.
7/21/2009	The Oregon Department of Land Conservation remands the urban reserve to the city for various technical reasons. DLCD issues an opinion that, "the city may well be able to demonstrate the need for large, relatively flat industrial land based on its recent economic opportunities analysis," but indicated that the city should pursue a UGB amendment to do such, not an urban reserve amendment. The DLCD director encourages the city to pursue such a UGB amendment.
3/2009-	The city creates the South Industrial Master Plan through community visioning

**Exhibit B to
Resolution No. 2014-3129**

10/2009	meetings, agency coordination, and consultant work.
11/2/2009	City Council adopts Resolution No. 2009-2872, accepting the South Industrial Master Plan as a vision for the south industrial area.
2/1/2010	City Council adopts Ordinance No. 2010-2723, revising the 2006 Economic Opportunities Analysis.
2/22/2010 – 2/16/2011	Several parties appeal the City Council adoption to LUBA and eventually to the Court of Appeals.
2/16/2011	The Court of Appeals remands the EOA relating to population forecast coordination, and issuing a new opinion on how to determine site suitability characteristics.
6/15/2010	The Newberg Urban Area Management Commission recommends that the City Council and County Commissioners adopt South Industrial UGB amendment.
7/18/2011	City Council adopts Ordinance No. 2010-2723, adopting the South Industrial UGB amendment, contingent on the County adopting a coordinated population forecast.
8/2011- 10/2011	Newberg asks the County to adopt the city's population forecast, along with the other cities' population forecasts as the official County coordinated population forecasts.
10/27/2011	The County Commissioners vote to apply for grant to create their own population forecast.
3/2012- 5/2012	A small group of city councilors meet with representatives of 1000 Friends of Oregon and Friends of Yamhill County to determine if there was common ground that would avoid litigation. The talks did not result in agreement.
8/20/2012	City Council adopts Ordinance No. 2012-2751, adopting the South Industrial UGB amendment based on the "safe harbor" population forecast.
10/18/2012	The County Commissioners adopt a new population forecast based on a PSU study.
11/8/2012	The County Commissioners consider the South Industrial UGB amendment and ask the City Council to (1) use the newly adopted population forecast, and (2) consider adopting the UGB amendment in two parts instead of just one.
1/22/2013	City Council adopts Ordinance No. 2013-2759, incorporating the revised population forecast into the South Industrial UGB findings. The Council also votes to ask the County Commissioners to adopt the UGB as one amendment instead of two.
5/20/2013	City Council adopts Ordinance No. No. 2013-2761, adopting revised findings to the South Industrial UGB amendment, revisions to the Economic Opportunities Analysis, amendments to the comprehensive plan and transportation system plan, and repealing certain Ordinances(Nos. 2010-2723, 2010-2740, 2012-2751, 2013-2759).

**Exhibit B to
Resolution No. 2014-3129**

8/27/2013	The updated UGB amendment is sent to the Department of Land Conservation & Development (DLCD) in the manner of periodic review.
12/20/2013	DLCD refers Newberg's UGB amendment to the Land Conservation & Development Commission (LCDC).
2/13/14 & 3/14/14	LCDC holds hearings on Newberg's UGB amendment. At the 3/14/14 meeting, LCDC gives the city until May 22, 2014 to decide whether they will enter mediation with objectors (primarily 1000 Friends of Oregon) or accept a remand.

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 5, 2014

Order ____ No.	Ordinance ____ No.	Resolution <u>XX</u> No. 2014-3130	Motion ____	Information ____
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SUBJECT: A Resolution authorizing the city manager to negotiate and execute an intergovernmental agreement with the City of Salem for the treatment and disposal of wastewater treatment sludge.

Contact Person (Preparer) for this Motion: Jason Wuertz, Project Manager
Jay Harris, City Engineer
Dept.: Engineering Services Department
File No.:

RECOMMENDATION:

Adopt Resolution No. 2014-3130

EXECUTIVE SUMMARY:

On November, 4, 2014, the City Council adopted resolution 2013-3094 authorizing the City Manager to enter into a Guaranteed Maximum Price contract amendment for the construction of the Dewatering, Headworks, and Influent Pump Station improvements at the wastewater treatment plant with Mortenson Construction.

One component of the construction is the installation of new wastewater sludge dewatering screw presses. The installation of this new facility will require a temporary shutdown of the existing dewatering belt presses. The dewatering process prepares the sludge for processing into compost.

Provisions are in place to limit the interruption of the dewatering system and to prepare the entire wastewater process to allow for storage of sludge within the existing processes. One additional backup plan for handling the sludge from the wastewater treatment process is to haul the sludge to the City of Salem's wastewater treatment plant. The City of Salem requires an intergovernmental agreement (IGA) for the treatment and disposal of wastewater sludge. A draft intergovernmental agreement (IGA) is included as Attachment 1, which will be reviewed by the city of Newberg attorney, and negotiated by the city manager pro tem.

FISCAL IMPACT:

The cost of \$0.05 per gallon price would be funded through account number 36.5150.706401 and is included in the fiscal year 2013-2014 budget. The estimated cost for this service would be no more than \$4,000 per day given the current flows. Funds are available through the original \$11.4 million and second \$14.5 million Clean Water State Revolving Fund loan through the Oregon Department of Environmental Quality. City Council accepted the first loan in February, 2011, by Resolution No. 2011-2926, and the second loan in June, 2012, by Resolution No. 2012-3010.

STRATEGIC ASSESSMENT:

This IGA will provide a backup plan for treatment and disposal of wastewater sludge during the construction of the dewatering facilities as part of the WWTP Repair, Renovation and Expansion Project.

**INTERGOVERNMENTAL AGREEMENT FOR
TREATMENT AND DISPOSAL OF WASTEWATER TREATMENT SLUDGE**

This Intergovernmental Agreement (Agreement) is hereby entered on April ____, 2014 by the CITY OF SALEM (Salem), an Oregon municipal corporation, and the CITY OF NEWBERG (Newberg), also an Oregon municipal corporation (hereafter may be referenced individually as "party" or collectively as "parties").

Recitals:

WHEREAS, Oregon Revised Statutes (ORS) 190.010 authorizes Salem and Newberg to enter into an intergovernmental agreement whereby Salem provides wastewater disposal services for Newberg; and

WHEREAS, Newberg's wastewater treatment plant is undergoing major renovation and new construction that are affecting the plant's sludge handling capabilities; and

WHEREAS, Newberg temporarily desires another treatment plant to process their waste activated sludge and primary sludge, and

WHEREAS, Salem has extra capacity at the Willow Lake Water Pollution Control Facility (Willow Lake) to accept Newberg's sludge.

NOW, THEREFORE, in consideration of the following mutual promises and obligations, Salem and Newberg agree as follows:

Section 1. Salem Shall:

- A. Accept from the Newberg wastewater treatment plant up to 25,000 gallons per day of thickened waste activated sludge and primary sludge with no objects larger than $\frac{3}{4}$ inch in diameter (hereafter "sludge") for disposal at Willow Lake. Salem may accept a higher volume of sludge on a case-by-case basis.
- B. Provide a location at Willow Lake for Newberg to offload/discharge their sludge. Under normal operations, the provided location will be a scum pit designated by Salem. The parties recognize that from time to time modifications may be needed to the scum pit to receive the discharge or Salem may need to designate another location for offloading/discharging. If a modification is needed or a new discharge location is so designated, Salem agrees to provide Newberg with timely notification in accordance with paragraph 1D below.
- C. Prior to discharge of sludge into Willow Lake, sample or designate a sample to be taken by a third party and analyze Newberg's sludge for loading content on a daily basis. A minimum of one composite metals test will be performed monthly.

**Attachment 1 to
Resolution No. 2014-3130 RCA**

- D. Notify Newberg of known modification(s) and repair (hereinafter “modification(s)”) required at Willow Lake needed to receive Newberg’s sludge, including, but not limited to, estimated costs of the modification(s) and time to construct.
- a. For known minor modification(s) having zero cost to Newberg, such as a simple relocation of discharge, 24 hour notice is requested; however, simple directions to the delivery driver may suffice.
 - b. For known modification(s) that will need to be constructed and for which Newberg will need to pay per Section 2C below, 14 day prior notice shall be provided. Notification shall include, but not be limited to, estimated costs of modification and time to construct or shall provide a time when same can be provided. Notwithstanding the aforementioned notice schedule, the parties do not contemplate there will be many modifications, if any, but simply wish to provide a reasonable time schedule should any arise and a reasonable opportunity to solve any associated problems cooperatively.
- E. Bill Newberg on a monthly basis for all disposal costs of Newberg’s sludge at Willow Lake and for all tests performed as a result of Newberg's sludge. The bill shall be based on the following:
- a. A rate of \$0.05 per gallon of sludge delivered to Willow Lake; and
 - b. Time and materials costs for the monthly metal tests and analysis of Newberg sludge. The daily testing and analysis costs are included in the above \$.05 per gallon charge;

Section 2. Newberg Shall:

- A. Deliver and discharge its sludge to the location designated by Salem, from time to time, to off-load sludge.
- B. Pay to Salem all costs billed by Salem, as set forth in Section 1 (E), within 30 days of the date Newberg receives the bill.
- C. Pay for all modification(s) required at Willow Lake needed to receive Newberg's sludge; provided, Newberg has received the notification of modification(s) set forth herein and agreed to pay for same.
- D. Provide Salem at least 24 hours advance notice for any schedule change.

Section 3. General Provisions.

- A. *Third-Party Beneficiaries.* There are no intended third-party beneficiaries to this Agreement. Salem and Newberg are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement.
- B. *Compliance with Applicable Laws.* Both parties shall comply with all federal, state

and local laws, regulations, executive orders and ordinances applicable to this Agreement.

- C: *Force Majeure.* Neither party shall be held responsible for delay nor default caused by fire, riot, acts of God, war or any other cause beyond the reasonable control of either party, respectively; provided, however, that in no event shall force majeure affect any party's payment obligation hereunder. Each party shall, however, make all reasonable efforts to remove or eliminate any cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. The parties in the exercise of good faith shall agree upon adjustments to the schedule and compensation for any additional direct and indirect costs resulting from such delays under this Agreement.
- D. *Survival.* All rights and obligations of the parties shall cease upon termination or expiration of this Agreement, except for the rights and obligations of a party for payment, indemnity, dispute resolution, maintenance of insurance, and those provisions, including, but not limited to, provisions governing laws which, by their nature, must survive termination to accomplish the intent of the parties as expressed in this Agreement.
- E. *Notice and Communication.* Any communications between the parties or notices to be given shall be given in writing by personal delivery, by mailing the same, postage prepaid, or by electronically confirmed facsimile transmission to the following:

City of Newberg

Jason Wuertz, PE, Civil Engineer

414 E First St, Newberg, OR 97132

Phone 503-554-1631 Email Jason.wuertz@newbergoregon.gov

City of Salem

Peter Fernandez, Director of Public Works

555 Liberty Street SE, Room 325, Salem OR 97302

Phone 503.588.6008 Fax 503.588.6387

Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any communication or notice delivered by facsimile or email shall be deemed to be given when receipt of the transmission is generated by the transmitting machine or emailed response acknowledging the receipt of communication or notice. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- F. *Independent Contracting Parties.* The parties intend that the relationship created by this Agreement is that of independent contracting parties. Neither party hereto shall be deemed an agent, partner, joint venture, or related entity of the other by reason of this Agreement. Each party agrees that its employees and contractor(s) are not the

employees of the other party and are not eligible for any benefits from the other party, including without limitation, federal social security, health benefits, and workers ' compensation, unemployment compensation and retirement benefits.

- G. *Successors and Assigns.* No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement. Salem and Newberg each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Agreement.
- H. *Severability.* The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- I. *Legal Review and Rules of Construction.* Each party has had the opportunity to have an attorney of their choosing review this Agreement and advise the Party of the benefits and consequences of signing this Agreement. This Agreement shall not be construed against either party regardless of which party drafted it. Other than as modified by this Agreement, the applicable rules of contract construction and evidence shall apply.
- J. *Governing Law; Venue; Consent to Jurisdiction.* This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Salem and Newberg that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County.
- K. *Merger Clause; Waiver.* This Agreement, including all attachments and law, rules and regulations incorporated herein or to which the Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.

**Attachment 1 to
Resolution No. 2014-3130 RCA**

- L. *Indemnification.* Newberg shall defend, indemnify, and hold harmless Salem from all liability for personal injury or damage to life or property related to or arising out of transport, delivery, or discharge of sludge to Willow Lake, save and except for liability arising out of the negligence or intentional acts of Salem, its officers, employees, and/or agents.
- M. *Insurance.* Each party agrees to maintain insurance levels or self-insurance in accordance with the Oregon Tort Claims Act for the duration of this Agreement at levels necessary to protect the public body from liability. Each party shall notify the other if a claim is made against the other pertaining to matters related to this Agreement.
- N. *Execution of Agreement.* This Agreement may be executed in two or more counterparts each signed by their respective parties, each of which shall constitute an original, and all of which together shall constitute one and the same Agreement.
- O. *Term and Termination.* The term of this Agreement shall start on the date of the last signature hereon. Salem or Newberg may terminate this Agreement by written mutual consent of the parties or upon either party providing upon not less than thirty days (30) days written notice to the other party and specifying the termination date.

IN WITNESS WHEREOF, the parties have, by approval of their respective governing bodies, caused this Agreement to be executed:

CITY OF SALEM

CITY OF NEWBERG

By: _____
Linda Norris, City Manager Date

By: _____
Lee Elliott, City Manager Pro Tem Date

Approved as to Legal Sufficiency:

Approved as to Legal Sufficiency:

Randall Tosh, City Attorney Date

Truman A. Stone, City Attorney Date



RESOLUTION No. 2014-3130

**A RESOLUTION AUTHORIZING THE CITY MANAGER PRO TEM TO
NEGOTIATE AND EXECUTE AN INTERGOVERNMENTAL AGREEMENT
WITH THE CITY OF SALEM FOR THE TREATMENT AND DISPOSAL OF
THE CITY OF NEWBERG'S WASTEWATER TREATMENT SLUDGE**

RECITALS:

1. On November, 4, 2014, the city council adopted Resolution No. 2013-3094 authorizing the city manager pro tem to enter into a guaranteed maximum price contract amendment for the construction of the Dewatering, Headworks, and Influent Pump Station Improvements Project at the wastewater treatment plant with Mortenson Construction.
2. A temporary shutdown of the dewatering process is required to complete the improvements to the wastewater sludge dewatering system.
3. A backup plan for treatment and disposal of wastewater sludge is necessary during this temporary shutdown in the event that internal sludge storage methods and processes fail.
4. The city of Salem has capacity and has agreed to dispose of and treat the city of Newberg's wastewater sludge.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The city council hereby authorizes the city manager pro tem to negotiate and execute an intergovernmental agreement with the city of Salem for the treatment and disposal of the city of Newberg's wastewater treatment sludge.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 6, 2014.

ADOPTED by the City Council of the city of Newberg, Oregon, this 5th day of May, 2014.

Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this 8th day of May, 2014.

Bob Andrews, Mayor

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: MAY 5, 2014

Order ____	Ordinance ____	Resolution <u>XX</u>	Motion ____	Information ____
No.	No.	No. 2013-3135		

**SUBJECT: A RESOLUTION GRANTING A 12
AGRICULTURAL LEASE BETWEEN THE CITY
OF NEWBERG AND HAROLD MEDICI**

**Contact Person (Preparer) for this
Motion: James (Jay) Harris
Dept.: Engineering Services Department
File No.:**

HEARING TYPE: ADMINISTRATIVE

RECOMMENDATION:

Adopt Resolution No. 2013-3135

EXECUTIVE SUMMARY:

1. The City owns property North of Bell Road in Yamhill County that is the site of the Oliver Springs facility improvements. The property is shown as tax lot 4501 on Yamhill County Tax Map 3S-2W-5, comprising approximately 20.28 acres.
2. Mr. Hal Medici contacted the City several years ago with a proposal to purchase or lease a portion of the aforementioned property. Mr. Medici owns the winery located at 28005 NE Bell Road, adjacent and east of the Oliver Springs property.
3. City Staff reviewed the property purchase request from Mr. Medici and found that the site is of proper size and is at the correct elevation for the construction of a future water reservoir to service future customers in pressure zone 4. Staff met with the City Council in executive session on December 2, 2013 and discussed the potential options. Council concurred that sales of the property was not in the best interest of the City.
4. Staff has had multiple phone conversations and meetings with Mr. Medici to discuss various leasing scenarios. The attached lease agreement Exhibit A will permit Mr. Medici to remove the overgrown vegetation and aging filbert orchard from City property and plant a small 3.45 acre vineyard. The small vineyard will have minimum value cash crops, but will significantly improve the appearance of the entrance to the Medici Winery and tasting room.
5. The proposed lease, attached as Exhibit A, commences at \$140 per acre in January of 2015, and includes a lease increase every 4 years, that averages 3.35% per year over the 12 year lease period. A 2009 study completed by Oregon State University found that in the southern Willamette Valley average lease rates for irrigated crop land range from \$110 to \$190 per acre.
6. A 12 year term is proposed for the new lease, which will allow time for the vineyard to mature. Anytime during the 12 year lease period, the City has retained the right to develop a future reservoir and/or water systems improvements on the property, as outlined in item #9 in the lease agreement.

FISCAL IMPACT:

The Medici farming lease provides income to the City, totaling \$6,624.00 over the 12 year lease period.

STRATEGIC ASSESSMENT:

It is in the City's interest to have its currently-unused lands under City ownership well maintained utilizing farming activities. It is important to have this done by a reputable, environmentally-conscious professional who will protect the quality of the property for the future benefit of the City.



RESOLUTION No. 2013-3135

**A RESOLUTION GRANTING A 12 YEAR AGRICULTURAL LEASE,
EXPIRING DECEMBER 31, 2026, BETWEEN THE CITY OF NEWBERG
AND HAROLD MEDICI FOR LAND ON OLIVER SPRINGS PROPERTY**

RECITALS:

1. The city owns property North of Bell Road in Yamhill county that is the site of the Oliver Springs facility improvements. The property is shown as Tax Lot 4501 on Yamhill County Tax Map 3S-2W-5, comprising of approximately 20.28 acres.
2. Mr. Hal Medici has requested a farming lease on the lower 3.45 acres of the Oliver Springs property, as shown on the attached Exhibit A. Mr. Medici owns the winery located at 28005 NE Bell Road, adjacent and east of the Oliver Springs property, and has plans to plant a small vineyard on the City owned property to improve the appearance of the entrance to his winery and tasting room.
3. The proposed lease, attached as Exhibit A, commences on January, 2015, at \$140.00 per acre and includes a lease increase every four years, averaging 3.35% per year over the twelve-year lease period. A 2009 study completed by Oregon State University found that in the southern Willamette Valley average lease rates for irrigated cropland range from \$110.00 to \$190.00 per acre.
4. A twelve-year term is proposed for the new lease, which will allow for time for the vineyard to mature. The city has retained the right to develop a future reservoir and/or water systems improvements on the property anytime during the twelve-year lease period, as outlined in item #9 in the lease agreement.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The city grants a twelve-year agricultural lease, expiring December 31, 2026, between the city of Newberg and Harold Medici for farmland on the Oliver Springs property, as shown in Exhibit A, which is hereby attached and by this reference incorporated.
2. The city recorder is authorized to execute all necessary documents to grant the lease for the twelve-year term.

3. The city attorney is authorized to negotiate any other terms and conditions that might be necessary and modify and/or approve provisions of the lease as deemed necessary.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 5, 2014.

ADOPTED by the City Council of the city of Newberg, Oregon, this 5th day of May, 2014.

Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this 8th day of May, 2014.

Bob Andrews, Mayor

**CITY OF NEWBERG
FARM LEASE**

THIS FARM LEASE AGREEMENT ("Agreement") is made and entered into on the ____ day of _____, 2014 between the City of Newberg ("Lessor") and Harold J. Medici ("Lessee").

AGREEMENTS

NOW, THEREFORE, for the consideration of the agreements set forth in this Agreement and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Property to be Leased.** The Lessor leases to the Lessee the following described property on the terms and conditions stated below:

A Portion of Tax lot 4501, Tax Map 3S-2W-05, Yamhill County, Oregon, comprising approximately 3.45 acres, as shown on the attached Exhibit A, Lease Area Sketch.

2. **Term.** The term of this lease shall commence on the date of this Agreement and continue to December 31, 2026, subject to termination for default and termination by notification as set out in Paragraphs 12 and 13 of this Agreement.

3. **Annual Lease Payments.** The Lessee shall pay annual rent to the Lessor for the leased premises as follows:

\$483.00 on or before January 1, 2015, 2016, 2017, 2018	(\$140/acre)
\$552.00 on or before January 1, 2019, 2020, 2021, 2022	(\$160/acre)
\$621.00 on or before January 1, 2023, 2024, 2025, 2026	(\$180/acre)

Make payment directly to **City of Newberg, Public Works Director, P.O. Box 970, 414 E. First Street, Newberg, Oregon 97132**

4. **Farming Practices.** Lessee shall farm said land in a good farmer-like manner according to usual farming practices in the area and will not discharge waste onsite or cause damage to adjacent properties. Lessee acknowledges that the Lessor has located on the property existing waterworks collection, treatment, and distribution systems for municipal water use, and may install additional water pumping, storage, treatment, electrical, and/or distribution systems during the lease period. The Lessee shall farm said land in a good farmer-like manner, but regardless of the farming practices in the area Lessee shall farm in a manner that complies with Attachment "B" (Additional Farming Conditions) which is attached hereto and by this reference incorporated herein.
5. **Structures.** The installation of temporary and/or permanent structures by lessee is not permitted within the lease area without obtaining prior written approval from the lessor.
6. **Value of Lessee Agricultural Crop Upon Expiration of Lease Term.** Upon expiration of the term of this lease or early termination thereof, agricultural crops within the lease area may be removed at City discretion/cost, and not harvested in the future by Lessor. However, at the time of such removal, the Lessor shall reimburse the lessee the value of the last full year lease payment paid by lessee, as full compensation for the value of the agricultural crop.

**Exhibit A to
Resolution No. 2014-3135**

7. **Notice to Quit the Premises.** Lessee waives notice to quit the premises at the expiration of the term of this lease or renewal thereof, and agrees to surrender possession of the leased premises to Lessor or its successor in interest. Lessee, however, shall have the right to harvest the crop for the year in which the lease or renewal thereof expires or is terminated if such crop, or crops, have not yet been fully harvested. All irrigation equipment belonging to Lessee and used on the leased premises shall remain the property of Lessee.
8. **Failure of Lessee to Pay Rent.** Lessee shall perform his agreements contained herein at the time and in the manner herein stated. In the event of failure of Lessee to pay rent within thirty (30) days after it is due and/or to other defaults by Lessee in the performance of the agreements herein, Lessor shall give thirty (30) days written notice to Lessee. Thereupon, unless the default is remedied within the thirty (30) day period of the notice, the Agreement shall terminate and the Lessor may enter into possession of the leased premises.
9. **Compensation for Crop Loss due to Water Systems Development.** Lessor retains the right to complete any future waterworks system improvements within the lease area, including but not limited to water pumping, treatment, storage, electrical, and/or distribution systems during the lease period. The Lessor shall to provide just compensation for agricultural crop loss due to development on the property at the rate of \$0.10 per square foot of disturbed lease area (equals \$4,356.00 per acre). The Lessor shall make all efforts possible to minimize crop damage during any future water systems development and shall notify lessee of proposed improvements in writing prior to construction of improvements.

Upon completion of any water systems development disturbing an area greater than 2,000 square feet, the lease area and yearly payments identified in paragraphs 1 and 3 above may be adjusted and pro-rated accordingly. All other tenants of the lease agreement remain in effect through the lease term.

10. **Non-assignment.** The Lessor is very concerned about the farming operations conducted on the property since the property is adjacent to the source of the municipal water supply for the Lessor. The Lessor needs to be insured that the farming operations will be carried out at a very high standard. Therefore, this Agreement cannot be assigned, transferred or any portion of the property be subleased without prior consent by Lessor. The Lessor may give written permission for an assignment, transfer or sublease. However, such permission is totally within the discretion of the Lessor and the Lessor may require additional conditions, change in terms including rent payment as a condition of consent.

If the Lessor consents to a land swap between the Lessee and other farm entities, subject to the other farm entity agreeing to abide by the terms and conditions of this Agreement, including the farming practices in Attachment "B". Upon land swapping, other farm entities will enter into a written acknowledgment to the Lessee to abide by these terms and conditions and the Lessee shall provide the Lessor with a copy of that acknowledgment. The Lessor shall send any notice of default of the Agreement to the Lessor who is responsible to notify any other farm entity.

11. **Indemnification.** Each party agrees to indemnify and hold harmless the other party for any claims or actions due to that party's actions or negligence. The Lessee agrees to defend and indemnify the Lessor against any actions due to the Lessee's farming operations upon the property.
12. **Early Termination.** Lessor may terminate this lease prior to December 31, 2026, if Lessor elects, in its sole discretion, that the Lessee has violated one of more of the items contained within this agreement. Lessor must provide the Lessee a minimum of a three (3) month written notice of lease termination. Lessee, however, shall have the right to harvest the crops for the crop year in which

the lease is terminated if the crops have not yet been fully harvested.

The lease agreement can be terminated at any time during the lease period, with mutual written agreement of both parties.

- 13. Notice.** Any notice that is required to be sent by the terms and conditions of this Agreement shall be sent by Certified Mail, Return Receipt Requested, or delivered personally as follows:

City of Newberg
Public Works Director
PO Box 970
414 E. First Street
Newberg, OR 97132
503-537-1211

Harold J. Medici
c/o Medici Winery
28005 NE Bell Road
Newberg, Oregon 97132
503-538-9668

- 14. Insurance:** Lessee shall maintain a property insurance policy to cover any losses sustained to Lessors property. It is acknowledged that Lessor may not maintain insurance to cover property and/or crop damage or loss caused by fire, theft, rain, water, overflow/leakage, acts of god, and/or any other causes. It is further acknowledged that the Lessor is not responsible for the aforementioned occurrences, and that the Lessee insurance policy shall indemnify Landlord for any losses sustained. The failure for the Lessee to maintain said insurance policy shall be a complete waiver of the right of the Lessee to seek damages against Lessor for any damages stated.
- 15. Entire Agreement.** This Agreement constitutes the entire agreement between the parties relative to the farm lease of the above described property and supersedes all prior agreements between the parties relating thereto. This Agreement may be modified only by instrument in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Farm Lease Agreement in duplicate as of the _____ day of _____, 2014.

CITY OF NEWBERG
(Lessor)

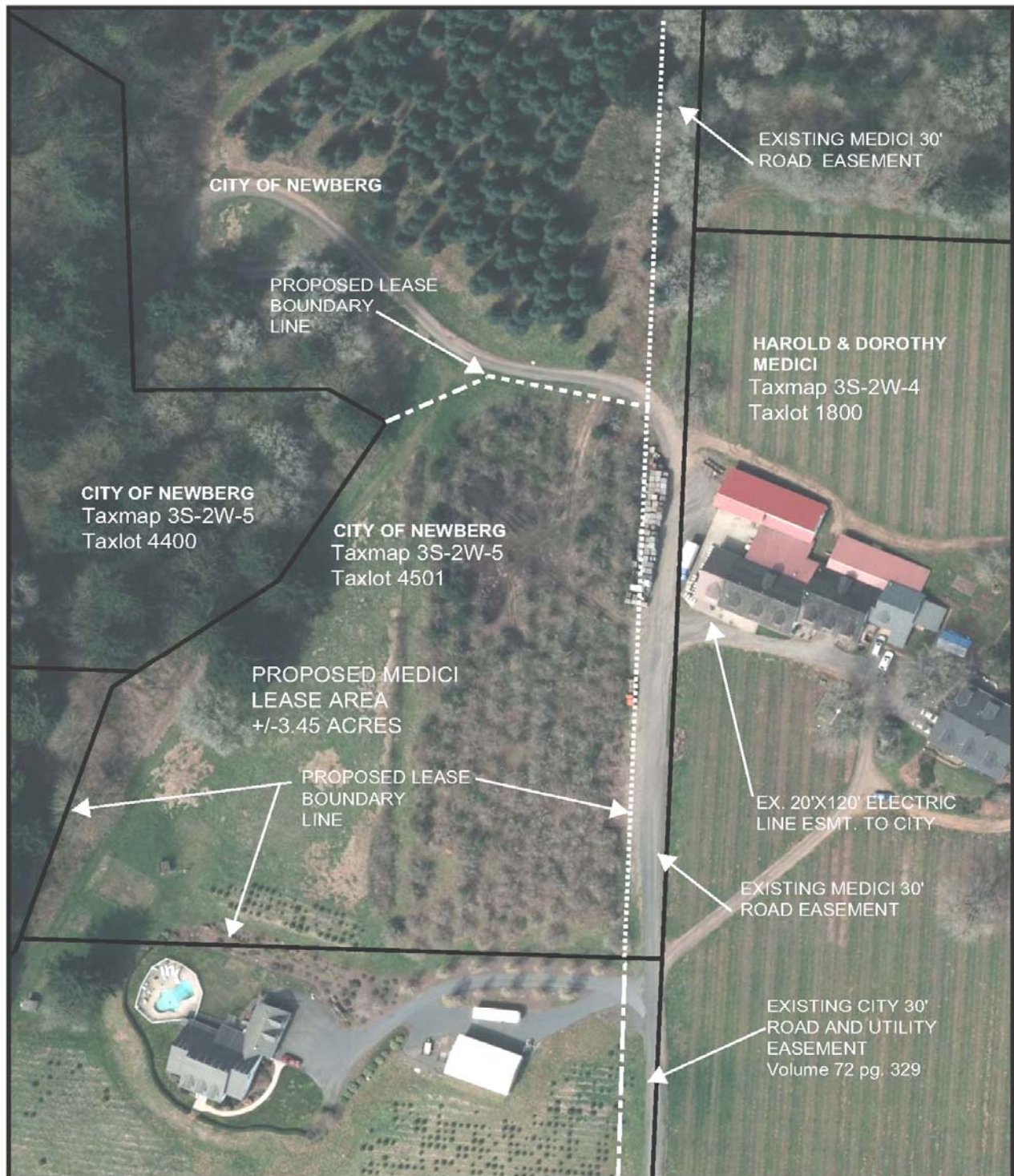
Harold J. Medici
(Lessee)

By: _____
Norma Alley
City Recorder

By: _____
Harold J. Medici

APPROVED AS TO FORM:

Truman A. Stone
City Attorney



**Medici Winery - Oliver Springs
Lease Area Sketch**



**Exhibit A
Lease Area Sketch**

1-15-2014 1"=100'

**ATTACHMENT B to
Farm Lease**

**ADDITIONAL FARMING CONDITIONS
City of Newberg Farm Lease**

1. Storage of agricultural chemicals, pesticides and fertilizers on-site shall be prohibited.
2. No manure and/or decomposing organic material shall be stored or stockpiled on-site. Agricultural chemicals shall be stored in locked buildings in standard approved packaging with labels clearly indicating their contents.
3. Chemicals shall be applied to cropland under Best Management Practices (BMP) established by the State of Oregon Department of Agriculture. BMP's may include and are not limited to the following:
 - a. Chemicals shall be applied strictly in accordance with authorized uses, label directions and other federal, state and local government policies and requirements;
 - b. No manure shall be applied on-site unless such application meets all state and federal requirements;
 - c. Irrigation of crops at rates, recommended in the Oregon State University Irrigation Guide, that do not promote leaching below the root zone;
 - d. Do not flood irrigate within 50 feet of wells;
 - e. Spray equipment shall be properly calibrated and maintained;
 - f. All mixing and application shall be performed by an Oregon licensed applicator;
 - g. Rinse water from containers and application equipment shall be diluted and spread on crops;
 - h. Chemical use shall be registered at the federal, state and local levels;
 - i. Mixing of chemicals shall be done in a designated area in the general vicinity of the intersection at the southwest corner of the property.
4. Lessee shall maintain an annual record of all chemicals used on the cropland including quantity, application rate and application period. Record shall be submitted to Lessor upon request. The record shall include the date of application, EPA chemical number, amount applied, and the trade name.
5. Lessee shall notify the Lessor of any spills of agricultural chemicals exceeding 5 gallons and fuels exceeding 10 gallons.
6. Agricultural chemicals shall not be applied within 100 feet of each well.
7. Permanent storage of fuels (e.g. gasoline, diesel) shall be prohibited.
8. Lessor shall reserve the right to inspect farming practices. Lessor shall also reserve the right to terminate the lease agreement, upon proper notification outlined in the lease agreement, if the above practices are not followed.

INITIALS:

Lessor: _____

Lessee: _____

Date: _____

Date: _____

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 5, 2014

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

SUBJECT: Approve the March 3, March 4, March 17, and April 7, 2014, 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 public meetings 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 CITY COUNCIL MINUTES
MARCH 3, 2014, 7:00 PM
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

A work session was held at 6:00 PM preceding the meeting. A presentation was given by Planning and Building Director Barton Brierley regarding a review of long range planning. All Councilors, the Mayor, city manager, city attorney, city recorder, and department heads were present with Councilor McKinney arriving at 6:01 PM. No action was taken and no decisions were made.

I. CALL MEETING TO ORDER

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

II. ROLL CALL

Members Present:	Mayor Bob Andrews	Denise Bacon	Mike Corey
	Ryan Howard	Bart Riersen	Lesley Woodruff
	Stephen McKinney		

Staff Present:	Lee Elliott, city manager pro tem	Truman Stone, city attorney
	Jay Harris, city engineer	Barton Brierley, planning and building director
	Norma Alley, city recorder	David Beam, economic development coordinator
	Nicole Tannler, minutes recorder	

Others Present: Jerrod Tompkins, Irene Dunlap, Beth Koschmann, Nathalie Hardy, Robert Soppe, Arthur Fish, Mitchell Gee, Mark Storm, and Anthony Weller

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGERS REPORT

Mr. Lee Elliott, city manager pro tem, reported a work session regarding the general fund forecasting and budget analysis will be held tomorrow. On February 20, 2014, Mayor Andrews and I met with the Chamber of Commerce to discuss economic development. The groups are beginning to communicate more and it was a very positive interaction.

V. PUBLIC COMMENTS

Mayor Andrews opened public testimony.

Mr. Jerrod Tompkins, Mortenson Construction, stated they would like to install a splash pad in the Cultural Center area. We met with Chehalem Park and Recreation (CPRD) to come up with a location and received approval from the CPRD Board. The pad would be approximately 20'x20' and Mortenson Construction wants to donate most of the equipment and materials for the project. Mayor Andrews asked if he had contacted the Cultural District. Mr. Tompkins answered not yet.

Ms. Irene Dunlap stated she is in support of the splash pad and has been in contact with Library Director Leah Griffith.

Ms. Beth Koschmann asked for support for the creation of the splash pad in Newberg. Mortenson Construction has been working on a petition for the splash pad and so far has 299 signatures. She brought a copy of the petition to be submitted into the record.

Ms. Nathalie Hardy thanked the council for the opportunity, and said there has been some informal contact with the Cultural District. She encouraged the council to approve a splash pad.

Mr. Robert Soppe stated he was going to start by citing the rules of addressing questions to the council, but the Mayor already recited them tonight. He commented on the lack of clarity and asked what it would take to get the council to follow these rules. On September 16 of last year he spoke during Public Comments before this council regarding issues with phasing of the Bypass and requested responses to some simple questions. He submitted some questions and information by email to the city recorder prior to the meeting. The morning following the meeting he submitted his testimony by email. Council is supposed to appoint someone to address these and a response should be sent. In five and a half months, he has not received a response. At the October 21 meeting of last year, he raised the issue again indicating he had received no response. Mr. Soppe requested, both verbally and in writing, responses to some additional questions about the process of getting a response as dictated by the Council Rules. Again, he does not know if the initial steps of the rules were followed but can attest to the fact that he has not received responses either by email or by postal mail. At the December 2 meeting of last year, he raised the issues for the third time. He requested responses both verbally and in the emailed copy of his testimony. Again, he does not know if the initial steps of the rules were followed but can attest to the fact that he has not received responses either by email or by postal mail. He is here before the council for the fourth time to get a response. The acting city manager did come to him in December and they had a productive meeting. Councilor Denise Bacon requested Mr. Soppe send the original questions directly to her. Mr. Soppe said I will send you the original questions via email.

VI. CONSENT CALENDAR

1. Consider a motion adopting **Resolution No. 2014-3114** approving the appointment of Sharon Carson-Small from temporary assistant utility billing clerk to full-time utility billing clerk.
2. Consider a motion adopting **Resolution No. 2014-3115** adopting a revised Engineering Fee Schedule.

Item #2 was pulled from Consent Calendar and discussed under New Business item #4.

MOTION: **Rierson/Corey** adopting **Resolution No. 2014-3114** approving the appointment of Sharon Carson-Small from temporary assistant utility billing clerk to full-time utility billing clerk. Motion carried (7 Yes/0 No).

VII. PUBLIC HEARING

Consider a motion adopting **Ordinance No. 2014-2770** vacating a portion of the Ninth Street right-of-way dedicated to the city between Industrial Parkway and Highway 219, creating utility easements, and creating an access easement.

Mayor Andrews introduced the legislative hearing and called for any conflicts of interest or abstentions. Mr. Truman Stone, city attorney, stated he had prior involvement with these clients at his previous firm so he cannot give any advice on this ordinance.

Mr. Barton Brierley, planning and building director, presented the staff report including a PowerPoint slideshow (see official meeting packet for full report). Staff recommended adoption of **Ordinance No. 2014-2770**

vacating a portion of the Ninth Street right-of-way dedicated to the city between Industrial Parkway and Highway 219, creating utility easements, and creating an access easement.

MOTION: Woodruff/Bacon adopting **Ordinance No. 2014-2770** vacating a portion of the Ninth Street right-of-way dedicated to the city between Industrial Parkway and Highway 219, creating utility easements, and creating an access easement. Read by title only. Motion carried (7 Yes/0 No).

VIII. NEW BUSINESS

1. Consider a motion directing staff to develop an application to the state of Oregon for a designated enterprise zone.

Mr. David Beam, economic development coordinator, presented the staff report including a PowerPoint slideshow (see official meeting packet for full report). Staff recommends moving forward with developing this application.

Mr. Mitchell Gee, Oregon Business development officer, discussed how an enterprise zone will help grow and bring more businesses to the area. An example is the city of Donald where a business wanted to find the best possible place to expand and in order to help them expand Donald created the enterprise zone with tax abatement, which is used in recruitment to help businesses grow.

Councilor Ryan Howard asked if there is any guarantee of business expansion by creating the zone and what involvement the county has. Mr. Gee said there is no guarantee of expansion, but council has local control over adding or waiving requirements. Councilor Howard asked why it is better to give tax breaks to just a certain area and not all of Newberg. Mr. Gee stated it is a community's choice. Councilor Howard asked what are other examples of successful enterprise zones. Mr. Gee said Salem and Donald are going to say it is absolutely worth it.

Mayor Andrews asked if there are any suggested boundaries or limitations we are looking at. Mr. David Beam replied it will be geared toward trade and industrial areas right now. Mr. Gee said there is no specified limit of where to draw your zones or discontinue zones. If you make the zone only in city limits then you will not need county approval.

Mr. Arthur Fish, Oregon Business Development Department business incentive coordinator, said the counties role only has an effect on businesses outside your city limits. They can be a sponsor and be involved in voting.

Councilor Lesley Woodruff asked if there was any way it can go wrong or backfire. Mr. Fish stated they do not always succeed and they have to pay back the taxes but it is an unsure thing with most of the companies doing well.

Mayor Andrews asked what the time period was for the program. Mr. Fish said the program in Yamhill is at least three years. Mayor Andrews said it starts out at three years and can be moved to five years. Mr. Fish said the designation can go up to 11 years and we have had some go the 10 years and nothing has happened.

MOTION: Howard/Bacon direct staff to develop an application to the state of Oregon for a designated enterprise zone. Motion carried (7 Yes/0 No).

2. Consider a motion adopting **Resolution No. 2014-3116** adopting the Erosion and Sedimentation Control Manual and Standard Details.

Mr. Jay Harris, city engineer, presented the staff report including a PowerPoint slideshow (see official meeting packet for full report).

Mr. Mark Storm thanked the engineering department and said they have been very receptive to our comments and do not want this to reflect negatively on them. In regards to design, I take exception to treating a roof or a patio like a parking lot or street. We do not need to treat patio water and even in detention ponds it goes into the grass before it gets into the street. It is detained and treated that way and should be removed from the manual. Roofs should be detained, but we have a hard time treating it. My concern with treatment is putting holes in people's yards for treatment of the water and it seems there are ways to detain that underground. Another concern is withholding that water close to the house because we do not want it under or near the house. I feel comfortable we can overcome these problems.

Councilor Howard stated from your testimony it seems you are mostly involved with residential construction. I agree the patio does not go into the storm water system, but I can see roof water going into the streams. Councilor Howard asked is there any way to use a swale or make use of the water. Mr. Storm said detaining it slows down the outflow.

Mr. Anthony Weller, CES NW, said temperature, mercury, and bacteria is a regional issue and 50% of mercury is air born traveling a long way. Roofs are exposed to the sun and the roof collects dust, which contains mercury. We could not find any other ways to treat it. Standards have changed and we want to keep in it the ground. We are trying to mimic the natural hydraulic scale and as lots gets smaller that becomes a problem. The treatment is plants and trees to cool it off or a swale where the grass pulls pollutants out of the water. We want to slow it down and allow sediment to get trapped. With the patio, the drainage can go onto a neighboring lot.

MOTION: Woodruff/Corey adopting **Resolution No. 2014-3116** adopting the Erosion and Sedimentation Control Manual and Standard Details. Motion carried (7 Yes/0 No).

3. Consider a motion adopting **Resolution No. 2014-3117** revising the Design Standards Manual and Standard Design Drawings.

Mayor Andrews asked staff to take Mr. Storm's testimony under advisement. Mr. Harris responded the staff will work with Mark Storm and look at reducing some of the sizing standards. In terms of revisions it allows the city manager to determine minor changes. Any major addition to the manual would come back to council. We can give an update in six months at a work session for things we are going to be fixing along the way.

Councilor Howard said sediments are one of the biggest pollutants and desire for the community to be involved in making it work.

MOTION: Howard/ Bacon adopting **Resolution No. 2014-3117** revising the Design Standards Manual and Standard Design Drawings. Motion carried (7 Yes/0 No).

4. Consider a motion adopting **Resolution No. 2014-3115** adopting a revised Engineering Fee Schedule.

Mr. Jay Harris, city engineer, presented the staff report (see official meeting packet for full report).

Mr. Mark Storm testified did anyone imagine when this was adopted it would cost a 1,300 square foot lot \$5,000.00, which is added to the cost of the house. All the work with affordable housing is used up with these fees. He asked if the private facility final inspection fee of \$300.00 is for every house and that is for

subdivisions that built a full storm drain facility. The 25 cent per foot of sidewalk is unnecessary as it has been 13 and 16 cents prior.

Mr. Harris said that item is primarily for industrial or commercial.

Councilor Stephen McKinney said we need to take care of problems up front and has heard from more than one builder that it is expensive to build in Newberg. I want to get a realistic idea of what it is to build in other communities and compare them. We need to consider incentives to build in Newberg.

Councilor Howard asked if there is a smaller per square foot fee. Mr. Harris answered no, there is one fee for all sizes with the intent the bulk are sidewalk repairs. The goal was to keep costs low but still recover some cost. We can add another line item in there but that may cause confusion. Mayor Andrews suggested corner lots be half price. Mr. Harris said ok.

Councilor Bart Rierson stated this could cause a large increase for developing property and I would like to have a better handle on it. It is difficult to say if it is fair and would like to know what some of the other local jurisdictions are doing.

Councilor Howard said he shares concerns with Councilor Rierson and it seems like fees do accumulate. I do feel uncomfortable passing this now without knowing the actual costs. Mr. Harris replied a majority of the costs are the System Development Charges (SDCs) and should be paid by the person making the impact, which are small when you look at the overall business process.

MOTION: McKinney/Rierson table Resolution No. 2014-3115 adopting a revised Engineering Fee Schedule to April 7, 2014. Motion carried (7 Yes/0 No).

IX. COUNCIL BUSINESS

Councilor Rierson stated the animal shelter property needs landscaping.

MOTION: Rierson/McKinney directed staff to work with Pete Siderius, Newberg High School greenhouse program coordinator, and Brian Stewart, CPRD landscaper, to develop and implement the NASF Plan for the animal shelter landscaping. Motion carried (7 Yes/0 No).

Councilor Rierson stated the splash pad has been talked about a long time and Mortenson Construction wants to donate labor and material. I am hoping we can waive SDCs.

Mr. Harris said if they could utilize the existing meter, they would only be subject to wastewater fees and permit fees. The meter was originally put in for a school so may be enough and we need to look at what is there right now. It appears permit fees can be waived by City Council but not SDC's, so in terms of waivers the staff needs to do some more research on that.

Mayor Andrews asked who is going to pay for the water. Mr. Harris said approximately 600 gallons of water per day will be used only in the summer and the re-use problem may be solved using it for irrigation or landscaping of the Cultural Center.

MOTION: Rierson/McKinney directed staff to work CPRD and Mortenson Construction to come up with a plan for Splash Pad at Cultural Center. Motion carried (7 Yes/0 No).

X. EXECUTIVE SESSION

Executive session pursuant to ORS 192.660(2)(a) relating to employment of a public officer, employee, staff member or individual agent – City Manager Recruitment.

Mayor Andrews called the executive session to order at 10:06 PM. Executive session was held with all councilors, the mayor, city manager, and city recorder present; no action was taken and no decisions were made.

Mayor Andrews closed the executive session and opened the public meeting at 10:29 PM.

MOTION: **Woodruff/Rierson** directed Nancy Boyer from COG to do background checks on the top five candidates. Motion carried (6 Yes/0 No/ 1 Abstain [Bacon]).

XI. ADJOURNMENT

The meeting adjourned at 10:31 PM.

ADOPTED by the Newberg City Council this ____ day of _____, 2014.

Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this ____ day of _____, 2014.

Bob Andrews, Mayor

NEWBERG CITY COUNCIL WORK SESSION MINUTES
MARCH 4, 2014, 7:00 P.M.
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:02 PM.

II. ROLL CALL

Members Present:	Mayor Bob Andrews Bart Rierson Lesley Woodruff	Denise Bacon Stephen McKinney	Ryan Howard Mike Corey
Staff Present:	Lee Elliott, city manager pro tem Jay Harris, city engineer Les Hallman, fire chief Brian Casey, chief of police Norma Alley, city recorder	Truman Stone, city attorney Janelle Nordyke, finance director Dave Brooks, IT director Barton Brierley, planning and building director Nicole Tannler, minutes recorder	
Others Present:	Roger Jordan and Robert Wells		

III. COUNCIL ITEMS

Presentation of Mid Year Analysis and Three Year Projections of the General Fund.

Mr. Lee Elliott said he has spent the last two and a half months working with consultants Roger Jordan and Bob Wells to delve into the general fund providing an overview, strategic assessment, and forecast. The staff has worked with the consultants closely and they would like to have them go over what they have come up with.

Mr. Roger Jordan said Mr. Robert Wells and I are long time city managers in Oregon, teachers for the League of Oregon Cities, assist in providing low cost training, and budget analyst consultants. We specialize in general fund budgeting for long range planning and projections. Newberg has a sophisticated budget and we suggest a fluid and dynamic budget, which is looked at by staff monthly and quarterly by the council. At the end of six months, we can get an estimate of the next three years. Since the recession property tax has gone down causing savings accounts to deplete very quickly. We see the general fund being balanced in a two to three years.

Mr. Robert Wells reported the city has done a great job of managing through the recession the last three years and your budget is healthy. Looking at the property tax graph, 2006 was increasing 12% per year, recession hit in 2007, and you were still above 6% through 2010. The state is coming out of recession and local government is still declining at 1%. We are looking at reducing your reserve fund to \$460,000.00. With PERs, in 2015 we are looking at \$600,000.00 in overage with a rate increase. This report assumes worst case scenario and we have property taxes increasing at 1% with a projection of 1.3% next year. The volatility makes it hard to plan for the future so we plan very conservatively. On cost of living, the forecast assumes 2% for employees. With tightening up the budget next year may be higher than originally projected and we have incorporated into the forecast a \$300,000.00 savings.

Councilor Ryan Howard asked if the \$300,000.00 takes into account the \$600,000.00. Mr. Wells said yes.

Mr. Jordan said this is just the general fund and there is really no money being moved around. The reserve account is at 15%, which is enough money to get you through October. My recommendation would be for the

council to decide how much risk your willing to take with your cash flow and what percentage you want your reserve to be. This is a policy the council should decide on.

Councilor Mike Corey asked if it would be prudent to have more money in reserves than to get through just October and is there a recommendation on a percentage. Mr. Wells answered a reserve of 15% is a really good reserve. Some Councils would consider more money for catastrophic and unforeseen events. You need to come to agreement what risk you are willing to take. You should feel good that you have those strong reserves. Mr. Wells said this is a model to use to look into the future.

Mr. Jordan said it is a manageable three year projection and it is very difficult to project where you will be 18 months from now. Council should look at the budget every quarter because the budget is fluid and you have to be on top of it all the time.

IV. ADJOURNMENT

The meeting adjourned at 7:48 PM.

ADOPTED by the Newberg City Council this ____ day of _____, 2014.

Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this _____ day of _____, 2014.

Bob Andrews, Mayor

NEWBERG CITY COUNCIL MINUTES
MARCH 17, 2014, 7:00 PM
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

A work session was held at 6:05 PM preceding the meeting. A presentation was given by Mr. Craig Honeyman, League of Oregon legislative director, regarding an update on the recent 2014 legislative session. All councilors, the mayor, city manager pro tem, city attorney, deputy city recorder, minutes recorders, and department heads 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 7:30 PM.

II. ROLL CALL

Members Present:	Mayor Bob Andrews	Bart Rierson	Mike Corey
	Lesley Woodruff	Denise Bacon	Ryan Howard
	Stephen McKinney		

Staff Present:	Brian Casey, chief of police	Lee Elliot, city manager pro tem
	Truman Stone, city attorney	Janelle Nordyke, finance director
	Paul Chiu, senior engineer	Barton Brierley, planning and building director
	Leah Griffith, library director	Less Hallman, fire chief
	Dave Brooks, IT director	Jennifer Nelson, deputy city recorder
	Mandy Dillman, minutes recorder	

Others Present: Sheryl Kelsh and Craig Honeyman

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Lee Elliot, city manager pro tem, reported Mr. Barton Brierley, planning and building director, will be leaving the city for a new opportunity in California. Mr. Elliot said the permanent city manager replacement will be hired in May, 2014. Mr. Craig Pat received a high award for the wastewater treatment plant. Mr. Truman Stone, city attorney, and Mr. Elliot have a possible understanding with the Springs customer agreement and will be moving in that direction after the Citizens' Rate Review Committee meets tomorrow evening for a rate establishment. In conclusion, he applauded the police department for receiving the safest community in Oregon award.

V. PUBLIC COMMENTS

Mr. Robert Soppe mentioned the annexation approved by Resolution No. 2014-3118 indicates only some property owners have signed. He is hoping only those who have approved will be the ones with consent. Obviously, it is early in the process and they may have more approvals in the end. Mr. Soppe was involved in a similar situation in 2007 where owners had annexation forced upon them and he urged the city not to force citizens this time even though it is legal. It creates a difficulty for the city to make arguments about policy in the future. He also asked for an evaluation of the situation, including the costs, financing, and taxation for revenue. The annexation is timely because of the Springbrook Road improvements; and island number one are

nowhere near that part of the road and it is not objectionable to the properties being part of the city. Mr. Soppe stated funding should be established early, so they know what to expect. Councilor Ryan Howard asked if the amount has been assessed by property owners. Mr. Soppe replied it had. Councilor Denise Bacon asked for clarification of payment for coming before council and if the city must pay for council's suggestions. Mr. Barton Brierley, planning and building director, said she was correct.

VI. CONSENT CALENDAR

1. Consider a motion adopting **Resolution No. 2014-3118** initiating annexation proceedings for four "islands" of unincorporated land surrounded by city limits along Springbrook Road and city owned property at 2716 Wynooski Road.
2. Consider a motion adopting **Resolution No. 2014-3119** authorizing the city manager pro tem to enter into a construction contract with Nutter Corporation for the Wynooski-Riverfront Utilities Project in the amount of \$910,400.22, and to negotiate and approve any construction change orders not to exceed 15 percent of the original contract.
3. Consider a motion adopting **Resolution No. 2014-3120** authorizing the city manager pro tem to execute Amendment No. 2 to the professional services agreement with Parametrix, Inc., to complete additional utilities relocation design and project management for the Wynooski-Riverfront Utilities Project in the amount of \$160,080.00.
4. Consider a motion approving a sound permit for the George Fox University sponsored "Raffles, Runs and Caring Endeavors Newberg" event on Saturday, April 5, 2014, at Jaquith Park.
5. Consider a motion approving the city council minutes from November 18, December 2, and December 16, 2013.

MOTION: McKinney/Corey adopting **Resolution No. 2014-3118** initiating annexation proceedings for four "islands" of unincorporated land surrounded by city limits along Springbrook Road and city owned property at 2716 Wynooski Road, adopting **Resolution No. 2014-3119** authorizing the city manager pro tem to enter into a construction contract with Nutter Corporation for the Wynooski-Riverfront Utilities Project in the amount of \$910,400.22, and to negotiate and approve any construction change orders not to exceed 15 percent of the original contract, adopting **Resolution No. 2014-3120** authorizing the city manager pro tem to execute Amendment No. 2 to the professional services agreement with Parametrix, Inc., to complete additional utilities relocation design and project management for the Wynooski-Riverfront Utilities Project in the amount of \$160,080.00, approving a sound permit for the George Fox University sponsored "Raffles, Runs and Caring Endeavors Newberg" event on Saturday, April 5, 2014, at Jaquith Park, and approving the city council minutes for November 18, December 2, and December 16 2013, [as amended]. Motion carried (7 Yes/0 No)

VII. NEW BUSINESS

1. Consider a motion accepting the Chehalem Valley Chamber of Commerce's second quarter report for the Visitor Information Center.

Ms. Sheryl Kelsh, Chehalem Valley Chamber of Commerce CEO, reported publications in several magazines, including Travel Oregon, for a second quarter. The Oregon events calendar was recently published with the Old Fashioned Festival and Camila Festival as well as other events. They have also received great feedback on the Travel Portland Guide advertisement. Additionally, they will be featured in the Portland Monthly Magazine for the Dragon Theater. The writer for AAA Magazine was well hosted in Newberg and instead of a few words of mention in his 1,000 page article; he wrote one 900 word article about Newberg and then a separate article

about Hwy. 99W. She continued with statistics on the new lodging study from Travel Oregon, pointing out although countywide occupancies have improved and renting of available rooms exceeds the rate, there has been no growth in available rooms. A study is currently being conducted to discover how many visitors the city is losing to other towns because of the lack in room availability. The issue is Newberg does not have the right product. Two businesses have reported sending 2,500 guests back to Portland because they lacked the capacity to host them. Ms. Kelsh also mentioned they hosted visitors from Pakistan who also visited the state of Washington and east coast; they said their favorite location was the Newberg/Dundee area. Ms. Kelsh attended the Travel Oregon tourism conference where she worked with Travel Yamhill Valley to leverage a \$10,000.00 matching grant opportunity for countywide customer service training for front line staff. Paddle Oregon will be returning to Newberg once again. In conclusion, she mentioned the Chehalem Valley Chamber of Commerce has initiated a monthly small-business counseling course with Chemeketa Community College. Councilor Howard asked when Paddle Oregon will be coming and how the chamber will be greeting their arrival. Ms. Kelsh replied the third week in August; and they will greet them with a food and beverage reception. Mayor Andrews asked about money the visitor center receives from the city of Dundee. Ms. Kelsh explained they receive \$2,500.00 from Dundee; however, it was not included in this current report. Mayor Andrews asked it to be included in the next report.

MOTION: **Rierson/Howard** accepting the Chehalem Valley Chamber of Commerce's second quarter report for the Visitor Information Center. Motion carried (7 Yes/0 No).

2. Presentation of the Newberg Cultural District 2014 Annual Report.

Ms. Leah Griffith, Chehalem Cultural Center Executive Board of Directors chair, and Mr. Robert Soppe, presented the staff report accompanied by a PowerPoint presentation (see official meeting packet for full report).

Mayor Andrews asked if they would charge a fee for rental of the external and internal spaces. Ms. Griffith explained they only have rental fees for the external space and it is a small amount to help pay for website maintenance, improvements, landscaping, etc. Mayor Andrews further inquired if the street area is included in the rental because there are special procedures to charge a person to use a city street. Ms. Griffith replied they have not gotten far enough into the process to answer that yet. Mayor Andrews suggested having the city attorney examine the situation further. Mr. Soppe advised they not create concrete rules for the usage of the Cultural District properties until after they have had time to see how the space can be used most effectively. Ms. Griffith mentioned the Newberg Farmers Market is moving to Wednesday, as to not interfere with the Tunes on Tuesday program. Mr. Truman Stone read the wordage on street rental rules in the Cultural District and explained streets are included in the rental currently; the rental rate is left to the board to decide and the money received goes to whomever owns the piece of street. The intergovernmental agreement (IGA) delegates authority to the board by the council. Ms. Griffith mentioned Chehalem Parks and Recreation Department (CPRD) has delegated the plaza in front of the Chehalem Cultural District, so any funds received for CPRD properties will go to use at the Chehalem Cultural Center.

IX. COUNCIL BUSINESS

1. Discussion regarding Phase 2 of the Newberg-Dundee Bypass in relation to the Transportation System Plan (TSP).

Mr. Barton Brierley, planning and building director, presented the staff report accompanied by a PowerPoint presentation (see official meeting packet for full report).

Discussion followed on the moratorium on properties in the area. It was determined the moratorium was from 2006 to 2011, and there is no current formal agreement that property owners will not build in the purposed

bypass path. The areas in question are zoned as residential professional, which would include houses, senior housing, nursing homes, professional offices, or similar facilities.

3. Trees in the Carnegie Court area.

Councilor Ryan Howard explained several small trees planted on the north side of Carnegie Court may impede view during concerts and other events because of the new location of the Tunes on Tuesday stage. Additionally the lawn area has been found to be in poor shape and may not handle the volume of people using the area for Tunes on Tuesday. He asked the council to give permission for grass improvements as well as the possibility of removing several trees. Discussion commenced on shade availability with tree removal and not currently providing shade. The Tunes on Tuesday stage will be left up over the summer for the library's outdoor summer activities to provide more shade than was available in previous years. Ms. Griffith gave details regarding the location of trees to be removed and grass areas needing more sand put down.

MOTION: **Rierson/Bacon** to pursue reinforcing grass in Carnegie Court and the possibility of removing several trees, by the city manager.

Discussion commenced on how the project would be funded; it would be considered normal city maintenance and covered under the landscaping budget.

VOTE: **Rierson/Bacon** to pursue reinforcing grass in Carnegie Court and the possibility of removing several trees, by the city manager. Motion carried (7 Yes/0 No).

2. Revisit Marijuana Dispensary discussion.

Mayor Andrews explained Mr. Brain Casey, chief of police, asked the council to revisit the marijuana dispensary moratorium discussion; however, no decisions will be made tonight.

Mr. Brad Berry, Yamhill County district attorney, presented a report regarding the deficiencies in House Bill 3460 and medical marijuana dispensaries and testimony supporting a moratorium on these types of facilities in the city of Newberg (see official meeting packet for full report). Mr. Berry reported the main problem with medical marijuana is that it is unregulated. He encouraged council to take advantage of the one-year moratorium in order to watch how other states or handling dispensaries and the evolution of marijuana as a legal substance. His main concerns were for the effects of increased availability, advertisements geared towards, and usage for youth, dangers in car fatalities, and the inability to measure marijuana consumption and levels of psychoactive ingredient in drivers. He also spoke of detrimental effects on neighborhoods with storefronts attracting suspicious loitering, crime and danger for children; lawsuits and expenses created for cities by the presence of the dispensaries; and gave examples of problems recently caused in Newberg with marijuana without the ease of access from a dispensary. Finally, since marijuana is still illegal by federal law, cities supporting the conducting of dispensaries are disobeying the law.

Councilor Denise Bacon asked if it would be easier to control dispensaries instead of random growers. Mr. Berry explained if they allowed, then both dispensaries and growers will be present; in addition, previously illegal sales and businesses will be able to return to selling synthetic variations of marijuana as well.

Mayor Andrews wished to confirm that packaging and marketing are currently unregulated and asked if there are really only four persons in the entire state allowed to manage all dispensaries. Mr. Berry said this was currently unregulated and the statement about the four persons was true.

Councilor Howard asked how the dispensaries could be unregulated and unlicensed. Mr. Berry explained the products, quantity or qualities are unregulated. The only requirement is they must sell to cardholders and hold a license; however, no regulation occurs after licensing.

Councilor Stephen McKinney explained he has seen marijuana wreak havoc on peoples' lives and felt it needs regulation and distribution should be through a pharmacy like any other drug. He also felt voting to allow dispensaries is a violation to the constitution and the laws they took an oath to uphold.

Councilor Bacon reminded the council of Councilor Howard's proposal they instill regulations such as locked safes, security cameras, and keeping product behind separate doors, where only licensed card holders can enter. She said she is on the compassionate side of the argument and wants to see people who need medication to be able to receive it; she does not feel opening dispensaries will make marijuana more accessible to others than it currently is. Furthermore, she spoke about the Harvard studies Councilor Howard had previously presented which shows addiction is not real.

Chief Casey appreciated Councilor Bacon's concern for those with medical needs; however, for every one person using marijuana for true medical relief, he sees 95 other people using it for illegal purposes. He feels there are alternative medications for pain relief. He agreed dispensaries could have cameras and alarms; however, banks are the most secure buildings in a city and they still are robbed. Additionally, he explained pharmacies could not sell medical marijuana because it is a federally illegal substance. Nine percent of people arrested for marijuana crimes have medical marijuana cards. Chief Casey felt crime rates would increase and have a detrimental effect of the city of Newberg if dispensaries are allowed. For those needing marijuana for true medical purposes, they are already receiving it and can continue to receive it without having dispensaries in this city. He encouraged the council to reconsider and not allow dispensaries.

Mayor Andrews asked what actions other cities in Yamhill County have taken. Mr. Berry explained there is a moratorium on dispensaries in unincorporated areas in Yamhill county and he last heard McMinnville was contemplating higher regulations. He was unsure of other cities' decisions, but agreed with Chief Casey some cities will allow dispensaries, creating pockets where people will congregate and cause illegal activities. He said he would look into what other cities are thinking.

Councilor Mike Corey asked where this leaves the city since the governor has not signed the bill yet and if the city is liable for litigation. Mr. Berry said the bill will pass whether the governor signs or not and has heard nothing indicating the governor does not approve of the one year moratorium. Councilor Corey asked about the possibility of lawsuits between cities. Mr. Berry did not see Yamhill County having any lawsuit issues. Councilor Corey suggested they poll Newberg residents to discover whether they want dispensaries in their town. Councilor Bacon pointed out citizens will be voicing an opinion when property owners will not allow them to rent their properties. Mr. Stone agreed, stating he heard the downtown business and property owners are not in favor of dispensaries in Newberg. He felt it would be best to put the moratorium in place; if council decided to allow it later, zoning limits could be set as to where dispensaries can operate to help avoid negatively affecting the business community. Mr. Stone felt it would be better to take Mr. Berry's "wait and see" approach with the moratorium because once marijuana is legalized, they may not be able to undo it.

Mayor Andrews expressed his desire to accept the moratorium. He asked Mr. Berry if persons needing medical marijuana have access to it currently. Mr. Berry explained the law authorizes a person with a medical marijuana card to have someone grow and provide it for them legally. Mayor Andrews was given clarification they would not be denying anyone who uses marijuana legitimately with this action. A discussion followed on how to proceed.

MOTION: **Rierson/Andrews** to direct staff to return with a request for council action (RCA) regarding a moratorium against medical marijuana dispensaries in Newberg at the April 7, 2014, city council meeting.

Councilor Howard said he believes medical marijuana dispensaries can be a good source of income, as well as reducing marijuana's presence on the black market. Councilor Bart Rierson felt there was a lot of one-sided information presented tonight and asked to see more material in defense of the subject.

VOTE: To direct staff to return with a request for council action (RCA) regarding a moratorium against medical marijuana dispensaries in Newberg at the April 7, 2014, city council meeting. Motion carried (6 Yes/1 No).

4. Budget discussion.

A discussion was held on the public safety fee increase and the hospitality management fee and it was decided both need to be further discussed later.

5. Update on Villa Road sidewalk.

Mr. Stone reported the legal department sent out a legal bulletin last week and the bid for the sidewalk came back as expected. They have enlisted an arborist to consider trees that could potentially cause issues and do not have anything further to state until they hear back from him.

X. ADJOURNMENT

The meeting adjourned at 10:24 PM.

ADOPTED by the Newberg City Council this 5th day of May, 2014.

Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this 8th day of May, 2014.

Bob Andrews, Mayor

**NEWBERG CITY COUNCIL MINUTES
APRIL 7, 2014, 7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

A work session was held at 6:00 PM preceding the meeting. An executive session pursuant to ORS 192.660(2)(i) relating to the performance review of the municipal judge was held. All councilors, except Councilor Mike Corey; mayor, Judge Blake, Jr., city recorder, and minutes recorder 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 7:00 PM.

II. ROLL CALL

Members Present:	Mayor Bob Andrews	Denise Bacon	Ryan Howard
	Bart Rierson	Stephen McKinney	Lesley Woodruff

Members Absent: Mike Corey (excused)

Staff Present:	Lee Elliott, city manager pro tem	Truman Stone, city attorney
	Jay Harris, city engineer	Jessica Pelz, assistant planner
	Steve Olsen, interim building & planning director	
	Nicole Tannler, minutes recorder	Norma Alley, city recorder

Others Present: Rick Fieldhouse, Brittani Johnson, Denise Banta, Ken Warren, Douglas Heuer, and Kathryn Goebenhain

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. SPECIAL PRESENTATIONS

1. Consider a motion approving a proclamation declaring the week of April 6-12, 2014, as National Volunteer Week in celebration of all the volunteers in our community that help keep our city and community thriving.

<p>MOTION: Bacon/Woodruff approving a proclamation declaring the week of April 6-12, 2014, as National Volunteer Week in celebration of all the volunteers in our community that help keep our city and community thriving. Motion carried (6 Yes/0 No/1 Absent [Corey]).</p>
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2. Consider a motion approving a proclamation declaring April 14 –19, 2014 as National Public Safety Telecommunicators Week.

<p>MOTION: Bacon/Woodruff approving a proclamation declaring April 14 –19, 2014 as National Public Safety Telecommunicators Week. Motion carried (6 Yes/0 No/1 Absent [Corey]).</p>
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V. CITY MANAGERS REPORT

Mr. Lee Elliott, city manager pro tem, reported large amounts of rain caused water to back up into the basement of City Hall but was caught early and we are now going through a renovation process. The Citizens' Rate Review Committee has finished their review and utility rates will be on the May 5, 2014, agenda. Budget meetings will commence on April 9, 2014, and meet every Tuesday until approved.

VI. PUBLIC COMMENTS

Mayor Andrews opened and closed the public testimony; no citizens appeared.

VII. CONSENT CALENDAR

1. Consider a motion adopting **Resolution No. 2014-3123** approving the appointment of Bryan Ortiz and Adam Claussen as full-time Maintenance Technician I positions.
2. Consider a motion adopting **Resolution No. 2014-3122** authorizing staff to submit an application to the state of Oregon business development department for the designation of an enterprise zone with the urban growth boundary (UGB) of the city of Newberg.
3. Consider a motion approving the city council minutes from January 6, January 21, February 3, and February 18, 2014.

MOTION: **Rierson/Howard** adopting **Resolution No. 2014-3123** approving the appointment of Bryan Ortiz and Adam Claussen as full-time Maintenance Technician I positions, **Resolution No. 2014-3122** authorizing staff to submit an application to the state of Oregon business development department for the designation of an enterprise zone with the urban growth boundary (UGB) of the city of Newberg, and approving the city council minutes from January 6, January 21, February 3, and February 18, 2014. Motion carried (6 Yes/0 No/1 Absent [Corey]).

VIII. PUBLIC HEARING

Consider a motion adopting **Ordinance No. 2014-2772** declaring a moratorium on medical marijuana facilities within Newberg and declaring an emergency.

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

Mr. Truman Stone, city attorney, presented the staff report. (see official meeting packet for full report).

Mr. Rick Fieldhouse, resident and student of Newberg history, stated Newberg had prohibition until 1966 and even though Newberg prohibited alcohol it took them a long time to get comfortable with it. Some folks just need a little more time to get comfortable with this idea.

Ms. Brittani Johnson, Newberg Downtown Coalition representative, said it is in the best interest of downtown to research this idea and learn from Washington State's first year. Give us this moratorium so we can prepare for this uncharted territory. The coalition board recommends approving the moratorium. Councilor Ryan Howard asked for the coalitions vote results. Ms. Johnson said one abstention and everyone else yes.

Ms. Denise Banta said she has worked in emergency rooms and as a healthcare provider believes in both traditional and non-traditional use of medication. There is a lot of information out there and doing a quick

search brought up a lot of public blogs and information. I was distressed to see how easy it is for anyone to get a marijuana card even without medical issues. While medical marijuana was intended for medical use, and I have seen it cure most anything, it seems to be turning toward recreational use. I ask you take time and evaluate this impact on our community.

Mr. Ken Warren, Newberg-Dundee Police Citizens Advisory Committee chairman, stated the committee supports a moratorium.

Mr. Douglas Heuer testified the 70 year history of prohibition and laws were first used to discriminate against Hispanics and this county has a special brand of discrimination. There has only been one application and that was in Dundee. Legalization will be allowed before the year is passed and because of the continuing prohibition the black markets will thrive. I am hoping the City Council keeps up with their vision statement to promote a healthy community. Councilor Denise Bacon asked can a person with a medical marijuana card get it from other than a dispensary. Mr. Heuer replied they can produce a large variety that can be used for many different medical issues.

Ms. Kathryn Goebenhain said I would like you to consider the many people who do not want to come forward because of the negative connotation. I am a massage therapist and I have clients who would benefit from medical marijuana. Mayor Andrews asked can these people can get medical marijuana now. Ms. Goebenhain said no these are people who are afraid of being judged by the community and they need somewhere close to get what they need.

Mr. Stone submitted two letters in to the record from Councilor Mike Corey and the Chamber of Commerce supporting the moratorium. Mr. Stone said it is not appropriate for him to make a recommendation, but from a legal and regulatory standpoint, the city is ready for this and would need time to prepare. Councilor Howard asked what kind of additional regulations would you recommend we will need over the next year. The city's zoning code has not contemplated this kind of use, does not address it specifically, and dispensaries do not fit into general retail. There may be other regulations the council wants to put in place like hours. I would say this has come on in a quick process and there has been a lot of uncertainty and rules may change over the next couple of months.

Councilor Bacon asked what other businesses do we have that specifically addresses regulations of hours that we isolate and make rules for. Mr. Steve Olsen replied there are questions on how to classify this because of proximity to schools and neighborhoods and this is not a process that would take a year. Most uses fall within broad general categories and we try not to categorize. Mayor Andrews stated within the state law there are requirements of time, place, and manner.

<p>MOTION: Rierson/McKinney adopting Ordinance No. 2014-2772 declaring a moratorium on medical marijuana facilities within Newberg, declaring an emergency, waive the second reading, and read by title only.</p>

Councilor Howard said this has been an interesting debate and we heard some concerns on the medical marijuana dispensary administration and this will not change that. I have heard more support than non-support on not having a moratorium. There is a strong support for these dispensaries, but many do not come out because of the stigmatism associated with it. I recognize the concerns and dangers brought up and I am in support of a program that can regulate dispensaries. I called Hazelden and asked about the dependence of marijuana and they said that is a very rare occurrence. The risk of not allowing dispensaries may encourage patients to use the black market, which may be marijuana that has not been regulated. What we are doing here is putting prohibition on a whole business. What will happen next year is people will ask for more time again. Right now the state has put a lot of thought into this and we need to find the solutions right now and put a system in place that will reduce the harm. That means not imposing a moratorium and I ask we impose a six month moratorium rather than one year.

Councilor Bacon stated I also received the most phone calls in five years about this. They are developing marijuana used more for medical and less for the high; it seems we fear what we do not know. A prominent member of the community said yes people are arrested with medical marijuana cards, but for other crimes. It has been reported there are lower crime rates with the regulation rather than the black market.

Councilor Lesley Woodruff said I am in support of the moratorium and do not see this as another year to ignore this, but as a way to take action and make something that is going to work for people who need it.

Councilor Bart Rierson said while I initially was against the moratorium, I would like the bugs in the system fixed. It is a system that has a lot of abuse and I like idea of getting people off the black market. I do not want to just push it down the road; rather, we should put things in place and have proper protections, which is why I have changed my position.

Councilor Stephen McKinney stated he was happy to second the motion to begin discussion although I find the moratorium distasteful, because this issue presents a lot of work for city staff. I feel the rules and legislation will change over the next year and we will be discussing different issues then.

MOTION: **Howard/Bacon** to amend **Ordinance No. 2014-2772** declaring a moratorium of six months on medical marijuana facilities. Motion carried (2Yes/4 No [Rierson, Andrews, Woodruff, McKinney]/1 Absent [Corey]).

VOTE: adopting **Ordinance No. 2014-2772** declaring a moratorium on medical marijuana facilities within Newberg and declaring an emergency and waive the second reading. Motion carried (4Yes/2 No Howard and Bacon).

IX. CONTINUED BUSINESS

Consider a motion adopting **Resolution No. 2014-3115** adopting a revised engineering fee schedule.

Mayor Andrews postponed Resolution No. 2014-3115 to the April 21, 2014, agenda.

X. COUNCIL BUSINESS

MOTION: **Andrews/Rierson** to compensate municipal judge by an increase of 4% in the 2014/2015 fiscal year. Motion failed for lack of majority approval (3Yes/3 No [Howard, McKinney, Woodruff] /1 Absent [Corey]).

Councilor McKinney stated he thinks he gives much more time than credits and deserves more than a 4% raise.

Mayor Andrews said I think we should look into getting him benefits.

Councilor Howard said I can not support this because of the budget meetings coming up and think we should look there for benefits in lieu of salary increase. I think it would be better to address this in that context. Councilor Woodruff said I agree with Councilor Howard on this.

VOTE: to compensate municipal judge by an increase of 4% in the 2014/2015 fiscal year. Motion failed for lack of majority approval (3Yes/3 No [Howard, McKinney, Woodruff] /1 Absent [Corey]).

XI. EXECUTIVE SESSION

1. Executive session pursuant to ORS 192.660(2)(a) relating to employment of a public officer, employee, staff member or individual agent – City Manager Recruitment.

Mayor Andrews called the executive session to order at 8:22 PM. Executive session was held with all councilors, except Councilor Corey whom was absent from the meeting; the mayor; city recorder and MWVCOG Executive Director Nancy Boyer present. No action was taken and no decisions were made.

Mayor Andrews closed the executive session and opened the public meeting at 8:58 PM.

2. Executive session pursuant to ORS 192.660(2)(h) concerning legal right and duties regarding current litigation related to the south industrial urban growth boundary (UGB) appeal.

Mayor Andrews called the executive session to order at 9:01 PM. Executive session was held with all councilors, except Councilor Corey whom was absent from the meeting; the mayor; city manager; city attorney; city recorder; interim planning and building director; and associate planner present. No action was taken and no decisions were made.

Mayor Andrews closed the executive session and opened the public meeting at 9:44 PM.

MOTION: **Rierson/Woodruff** to direct staff to prepare an RCA in support of Option 4 for future council consideration on May 5, 2014. Motion carried (6 Yes/0 No/1 Absent [Corey]).

3. Executive session pursuant to ORS 192.660(2)(f) to consider information or records that are exempt by law from public inspection.

Mayor Andrews called the executive session to order at 9:47 PM. Executive session was held with all councilors, except Councilor Corey whom was absent from the meeting; the mayor; city manager; city attorney; city recorder; interim planning and building director; and associate planner present. No action was taken and no decisions were made.

Mayor Andrews closed the executive session and opened the public meeting at 10:45 PM.

MOTION: **Howard/Bacon** to authorize the city manager pro tem to eliminate the animal control officer position, begin discussion with the county regarding leasing the animal shelter, end the assistant city manager position, and prepare to hire the public works director. Motion carried (2 Yes/4 No/1 Absent [Corey]).

XII. ADJOURNMENT

The meeting adjourned at 10:58 PM.

ADOPTED by the Newberg City Council this ____ day of _____, 2014.

Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this ____ day of _____, 2014.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 5, 2014

Order ____ No. ____	Ordinance ____ No. ____	Resolution <u>XX</u> No. 2014-3131, No. 2014-3132, No. 2014-3133, and No. 2014-3134	Motion ____	Information ____
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**SUBJECT: New Water, Wastewater, Stormwater,
and Springs Water Rates Effective January 1, 2015**

**Contact Person (Preparer) for this
Motion: Jay Harris, Interim PW Director and
Janelle Nordyke, Finance Director**

HEARING TYPE: ADMINISTRATIVE

RECOMMENDATION:

Adopt **Resolution No. 2014-3131, No. 2014-3132, No. 2014-3133 and No. 2014-3134.**

EXECUTIVE SUMMARY:

The Citizens' Rate Review Committee (CRRC) was formed by the City Council in 1992 to review and recommend utility rates (water, wastewater and stormwater) to the City Council for approval and implementation.

The Committee met twelve times between October 9, 2013 and April 2, 2014 to review water, wastewater, stormwater, and springs system water rates, including the Capital Improvement Program projects, operating, and maintenance costs for all the systems.

The CRRC reviewed proposed rates at their meetings. The review included:

- The Capital Improvement Plans for the water, wastewater and stormwater systems for the next five years
- Revenue and budget requirements
- Service characteristics
- Customer class characteristics
- Peak demands on the systems

The driving forces for the proposed new rates included:

- System characteristic and load requirements
- Supporting the Operations and Maintenance budgets
- Revenue requirements
- Debt service requirements

The following approved minutes are found on the City's website under Archived Meetings at:

www.newbergoregon.gov/meetings/:

- Approved minutes of the CRRC in 2013 from October 9, October 24, November 6, November 21, December 11, December 19, and in 2014 from January 8, January 22, February 5, February 12, February 25 (Water, Wastewater, Stormwater Town Hall/Public Hearing), March 5, and March 18, 2014 (Springs Town Hall/Public Hearing).

The following minutes are included in this packet:

- Draft minutes of April 2, 2014.

In addition to the proposed rate increases, the CRRC is recommending that the City Council:

1. Increase the fixed-based percentage for water from 20% to 22.50% the first year and from 22.50% to 25% the second year, and
2. Increase the fixed-based percentage for wastewater from 28% to 29% the first year and from 29% to 30% the second year

The proposed rates included in each resolution are to cover the time period from January 1, 2015, through December 31, 2016.

FISCAL IMPACT:

These recommended changes to the rates are anticipated to raise \$4,771,356.00 in revenues in FY 2015-2016 and \$5,069,261.00 in FY 2016-2017 in the Water Fund; \$6,950,440.00 in revenues in FY 2015-2016 and \$7,386,833.00 in FY 2016-2017 in the Wastewater Fund; and \$1,064,515 in revenues in FY 2015-2016 and \$1,066,968.00 in FY 2016-2017 in the Stormwater Fund. These amounts are sufficient to cover the cost of current operation and maintenance costs, provide for the necessary capital projects and meet cash flow and debt covenant requirements in their respective funds.

STRATEGIC ASSESSMENT:

It is important and necessary to raise sufficient revenues in order to properly operate and maintain the City's water, wastewater, stormwater and springs water systems.

**CITY OF NEWBERG
CITIZENS' RATE REVIEW COMMITTEE
WEDNESDAY, APRIL 2, 2014
7:00 PM MEETING**

PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

I. CALL MEETING TO ORDER

Chair Tony Rourke called the meeting to order at 7:10 PM.

II. ROLL CALL

Members Present: Tony Rourke, Chair Blair Didway, Vice Chair Ernie Amundson
 Helen Brown Charles Zickefoose Rick Rogers
 Mike Gougler Mayor Bob Andrews, ex-officio

Staff Present: Lee Elliott, City Manager, Pro Tem Janelle Nordyke, Finance Director
 Jay Harris, Interim Public Works Director Nicole Tannler, Minutes Recorder

Others Present: Deb Galardi, Galardi Consulting LLC

III. PROCLAMATION

Mayor Andrews stated that this may be a bit premature, but he felt it was appropriate in sharing with the CRRC that at the next City Council meeting a proclamation announcing April 6 - 12, 2014 as "National Volunteer Week" will be shared. He expressed his appreciation to the CRRC members in their commitment to volunteering on the CRRC.

IV. PUBLIC COMMENTS

Chair Tony Rourke opened and closed the public testimony; no citizens appeared.

V. CONSENT CALENDAR

1. Approve the following minutes:

December 11, 2013	February 12, 2014
December 19, 2013	February 25, 2014
January 8, 2014	March 5, 2014
January 22, 2014	March 18, 2014
February 5, 2014	

<p>MOTION: Rourke/Zickefoose to approve the following minutes December 11, 2013, December 19, 2013, January 8, 2014, January 22, 2014, January 22, 2014, February 5, 2014, February 12, 2014, February 25, 2014, March 5, 2014, and March 18, 2014. Motion carried. (7 Yes/ 0 No)</p>

VI. CONTINUED BUSINESS

1. Staff recommendation on Water, Wastewater, and Stormwater rates.

Ms. Deb Galardi, Galardi Consulting LLC, presented the report. (see official meeting packet for full report)

MOTION: Rourke/Brown moved to recommend water rate increase by 7% with revenues for fixed costs to increase to 25%. Motion carried. (7 Yes/ 0 No/ 0 Absent)

2. Deliberate on Wastewater and Stormwater rates with motion.

Ms. Deb Galardi, Galardi Consulting LLC, presented the report. (see official meeting packet for full report)

MOTION: Rourke/Didway moved to recommend wastewater rate increase by 5.75% with revenues for fixed costs to increase to 30%, and Stormwater rate increase by 9%. Motion carried. (6 Yes/ 0 No/ 0 Absent/ 1 abstention Rick Rogers)

3. Staff recommendation on springs rates.

Ms. Deb Galardi, Galardi Consulting LLC, presented the report. (see official meeting packet for full report)

4. Deliberation of springs rates with motion

Mr. Rick Rogers stated he is waiting for an MOU (memorandum of understanding) between the city and the springs customers. He asked if the agreement can be prepared before the City Council meeting May 5, 2014.

Mr. Chuck Zickefoose stated the CC should be corrosion control, not chlorine contact as is mentioned on the slide presentation. He asked what staff's recommendation is. Staff replied Option A effective on January 1, 2015 as we must follow the Council's requirement per Resolution 2008.

Chair Rourke asked about the additional volume charge and when we will recover that. Staff is recommending it is included in Option A, with a 2 year recovery rate.

Mr. Mike Gougler asked if we should present as a motion or discuss the issue first. We really won't be able to divest in 1 year and he recommends Option C for January 1, 2015 and if it is not divested before January 1, 2016 then switch to option A.

Mr. Rogers said it should not be solely upon the springs customers and he also agrees with no significant work toward divesting near the end of 2015. There should be a flat rate unless there is no divesting and no shortfall needs to be addressed until 2016.

Chair Rourke stated he will reiterate the earlier request by Mr. Rogers to raise rates to a fixed amount like the water rate increase of 7%. He also asked if we need to replace the pipe. Mr. Jay Harris said the average pipe replacement is 500 feet.

Mr. Gougler said we are not charged to come up with political solutions but are required to come up with a rate to maintain the system. He thinks it should be Option C the first year because there are going to be capital/repair costs on the system and Option C still requires the rate payers of the city to subsidize the springs class. It reduces the amount the springs customers have to pay as well as the rest of the customers.

Chair Rourke asked Mr. Gougler to clarify the recommendation. Mr. Gougler stated we do not want to cover the shortfall and the 2007 methodology is in place through the end of 2014. It is not going to be possible to complete the divesting agreement prior to end of 2014, so for one year we have one rate Option C to cover the cost. It does not totally cover the cost but it is closer than the 2007 resolution.

Mr. Rogers said the project was overrun but the operations and maintenance was covered. If we are going to recoup from 65 users we need to confirm the pipe replacement. There is an historical obligation with these users and if nothing is done by January 2016 it is fair warning.

Mr. Gougler stated a reasonable estimate is based on assumed costs during this period and if there is no need to do pipe replacement in 2015 then they will get a credit towards divestiture. Mr. Rogers responded the city can bear the cost much easier than the springs customers. Mr. Lee Elliott said these are the true costs for the operations and maintenance and the rates have gone up every year.

Mr. Rogers stated if the city was not tracking the rates correctly, then it is the city's problem, because we were being told what to pay.

Mr. Blair Didway said there is lots of discussion that can be continued all night but the per user rate for the springs is approx \$1,000.00, which is Option D. Mr. Gougler said Option C for 1 year with no recovery for 2015 and if divestiture does not happen by 2016 Option A with no shortfall recovery. Option E is Mr. Rogers's option to be 2007 resolution times 7% rate increase.

Motion: **Gougler/Brown** move to adopt Option C for January 1, 2015 and if divestiture isn't completed by January 1, 2016, then Option A will be implemented, but with no recovery of shortfall. Motion removed from table.

Mr. Rogers said that if you take out the pipe replacement it comes down to 32% and keep out overrun. Down to 28.8% for total costs of \$99,192.00 and revenues at \$77,131.00 equates to a 26.6% increase.

Motion: **Rourke/Rogers** moved to recommend for the interim period for springs rates to increase by 25% until 2016 (to accommodate both parties City Council and springs customers) and jump to Option A if no divestiture. If the city is required to do capital improvements and, but not limited to, pipe replacement in 2015, then the rates in Option A would be recalculated as of January 6, 2016. No additional shortfall will be recovered from the past CT project for the 2 year rate cycle. Motion carried. (7 Yes/ 0 No/ 0 Absent)

5. Final overview on rate recommendation to City Council

We have recommended a 7% increase for water and increasing the fixed costs from 20% to 25% over the course of this two-year rate cycle, a 5.75% increase for wastewater and increasing the fixed costs from 28% to 30% over the course of this two-year rate cycle, a 9% increase for stormwater, and a 25% increase for springs in 2015, jumping to option A in 2016 to actual costs if springs divestiture does not

take place by January 6, 2016.

VII. FINAL STEPS IN PROCESS

The next step will be a public hearing at the May 5, 2014, City Council meeting to hear the rates as recommended by the CRRC at 7:00 PM at the Public Safety Building.

Next CRRC meeting will be in June to approve the grant funding to non-profits to help Newberg citizens with their utility bill.

VIII. ADJOURNMENT

The meeting adjourned at 8:47 PM.

Approved by the Citizens' Rate Review Committee on this 4th day of June, 2014.

Citizens' Rate Review Committee Recording Secretary

Citizens' Rate Review Committee Chair



RESOLUTION No. 2014-3131

**A RESOLUTION ADOPTING NEW MONTHLY WATER RATES FOR THE
CITY OF NEWBERG EFFECTIVE JANUARY 1, 2015**

RECITALS:

1. Newberg Municipal Code Chapter 13.15 governs the city of Newberg water system and the adoption of city water rates, fees and charges.
2. The Citizens' Rate Review Committee (CRRC) met October 9, 2013, October 24, 2013, November 6, 2013, December 11, 2013, and December 19, 2013, to review water system rates and system attributes, including the Capital Improvement Program and the system operating and maintenance costs.
3. The review also included the modification of the water rate structure by increasing the fixed cost charge portion for the service charges. That fixed portion allocation will change from the current 20% to 22½% in January, 2015, and to 25% in January, 2016.
4. The CRRC held a Town Hall meeting and Public Hearing on the proposed monthly charges on February 25, 2014, and approved their final rate change recommendations to City Council on April 2, 2014.
5. The CRRC recommends changes to the monthly water charges based on their analysis of current and future anticipated water fund needs.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Effective January 1, 2015, the monthly water service rates shall consist of charges as shown on the attached Exhibit A, which is hereby attached and by this reference incorporated.
2. Rates for any other water use, not explicitly provided for in this resolution, shall be established by the finance director to conform as close as practical to the charges established herein. Such charges shall be reviewed by the City Council.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 6, 2014.

ADOPTED by the City Council of the City of Newberg, Oregon, this 5th day of May, 2014.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 8th day of May, 2014.

Bob Andrews, Mayor

**Exhibit A to
Resolution No. 2014-3131**

CITY OF NEWBERG			
MONTHLY WATER SERVICE CHARGES			
Customer Class	Current	Effective	Effective
	Through	January 1,	January 1,
		2015	2016
Service Charge (\$/Month)	\$ 1.18	\$ 1.93	\$ 1.93
Meter Charge (\$/Month)			
3/4"	\$ 8.13	\$ 9.55	\$ 11.78
1"	13.82	16.24	20.03
1-1/2"	26.83	31.52	38.87
2"	43.09	50.62	62.43
3"	81.30	95.50	117.80
4"	135.77	159.49	196.73
6"	270.73	318.02	392.27
8"	433.33	509.02	627.87
10"	677.23	795.52	981.27
Volume Charge (\$/ccf)			
S-F Residential	\$ 3.59	\$ 3.73	\$ 3.85
Multifamily	2.91	3.06	3.15
Commercial	3.47	3.63	3.75
Industrial	3.75	3.83	3.95
Irrigation	6.40	6.50	6.69
Outside City	5.39	5.59	5.78
Public Agency	3.57	3.77	3.88
Non-Potable	3.52	3.52	3.52



RESOLUTION No. 2014-3132

A RESOLUTION ADOPTING NEW MONTHLY WASTEWATER RATES FOR THE CITY OF NEWBERG EFFECTIVE JANUARY 1, 2015

RECITALS:

1. Newberg Municipal Code Chapter 13.10 governs the city of Newberg wastewater system and the adoption of the wastewater rates, fees and charges.
2. The Citizens' Rate Review Committee (CRRC) met January 8, 2014, and January 22, 2014, to review wastewater system rates and system attributes, including the Capital Improvement Program and the system operating and maintenance costs.
3. The review also included the modification of the water rate structure by increasing the fixed cost charge portion for the service charges. That fixed portion allocation will change from the current 28% to an estimated 30% by January, 2016.
4. The CRRC held a Town Hall meeting and Public Hearing on the proposed monthly charges on February 25, 2014, and approved their final rate change recommendations to City Council on April 2, 2014.
5. The CRRC recommends changes to the monthly wastewater charges based on their analysis of current and future anticipated wastewater funds needs.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Effective January 1, 2015, the monthly wastewater service charges shall be as follows:

CITY OF NEWBERG			
MONTHLY WASTEWATER SERVICE CHARGES			
Customer Class	Current	Effective	Effective
	Through	January 1,	January 1,
	Dec 31, 2014	2015	2016
Service Charge (\$/Month)			
Multifamily	\$ 18.07	\$ 19.43	\$ 20.66
	16.69	17.13	18.24
Volume Charge (\$/ccf)			
S-F Residential	\$ 7.40	\$ 7.77	\$ 8.19
Multifamily	7.40	7.77	8.19
Commercial - 1	7.40	7.77	8.19
Commercial - 2	9.19	9.50	10.02
Commercial - 3	15.39	15.50	16.37
Industrial	9.19	9.50	10.02
Outside City	7.40	7.77	8.19

2. Rates for any other wastewater use, not explicitly provided for in this resolution, shall be established by the finance director to conform as close as practical to the charges established herein. Such charges shall be reviewed by the City Council.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 6, 2014.

ADOPTED by the City Council of the City of Newberg, Oregon, this 5th day of May, 2014.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 8th day of May, 2014.

Bob Andrews, Mayor



RESOLUTION No. 2014-3133

A RESOLUTION ADOPTING NEW MONTHLY STORMWATER RATES FOR THE CITY OF NEWBERG EFFECTIVE JANUARY 1, 2015

RECITALS:

1. Newberg Municipal Code Chapter 13.20 governs the stormwater system and the adoption of the stormwater rates, fees, and charges.
2. The Citizens' Rate Review Committee (CRRC) met February 5, 2014, and February 12, 2014, to review stormwater system rates and system attributes, including the Capital Improvement Program and the system operating and maintenance costs.
3. The CRRC held a Town Hall meeting and Public Hearing on the proposed monthly charges on February 25, 2014, and approved their final rate change recommendations to City Council on April 2, 2014.
4. The CRRC recommends changes to the monthly stormwater charges based on their analysis of current and future anticipated stormwater funds needs.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Effective January 1, 2015, the monthly stormwater service rates shall be as follows:

CITY OF NEWBERG			
MONTHLY STORMWATER SERVICE CHARGES			
Customer Class	Current	Effective	Effective
	Through	January 1,	January 1,
	Dec 31, 2014	2015	2016
Service Charge (\$/EDU/Month)	\$ 7.30	\$ 7.96	\$ 8.67

An EDU (Equivalent Dwelling Unit), as defined by Newberg Municipal Code Section 13.20.020, means a configuration of development, or impervious surfaces on a parcel, deemed to contribute an amount of runoff to the city's stormwater system equal to that runoff created and contributed to the system by the average single-family residential parcel.

2. Adjustments or reductions of the fee can be made upon application of the owner of developed property to the city engineer and upon certification by the city engineer that the owner or the property meets one or more of the criteria established in Newberg Municipal Code Section 13.20.080.

3. Rates for any other stormwater use, not explicitly provided for in this resolution, shall be established by the finance director to conform as close as practical to the charges established herein. Such charges shall be reviewed by the City Council.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 6, 2014.

ADOPTED by the City Council of the City of Newberg, Oregon, this 5th day of May, 2014.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 8th day of May, 2014.

Bob Andrews, Mayor

A RESOLUTION ADOPTING NEW MONTHLY SPRINGS WATER RATES FOR THE CITY OF NEWBERG EFFECTIVE JANUARY 1, 2015

RECITALS:

1. Newberg Municipal Code Chapter 13.15 governs the city of Newberg water system and the adoption of city springs water rates, fees and charges.
2. The Citizens' Rate Review Committee (CRRC) met November 21, 2013, December 11, 2013, and March 5, 2014, to review the springs water system rates and system attributes, including the Capital Improvement Program and the system operating and maintenance costs.
3. The CRRC held a Town Hall meeting and Public Hearing on the proposed monthly charges on March 18, 2014, and approved their final rate change recommendations to City Council on April 2, 2014.
4. The CRRC recommends changes to the monthly springs water charges based on their analysis of current and future anticipated springs needs.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Effective January 1, 2015, the monthly springs service water rates shall be as follows:

CITY OF NEWBERG MONTHLY SPRINGS SERVICE CHARGES			
Customer Class	Current Through Dec 31, 2014	Effective January 1, 2015	Effective January 1, 2016
Customer Charge (\$/Month)	\$ 1.18	\$ 5.00	\$ 5.00
Volume Charge (\$/ccf)	\$ 6.18	\$ 7.73	\$ 12.77

2. Rates for any other springs water use, not explicitly provided for in this resolution, shall be established by the finance director to conform as close as practical to the charges established herein. Such charges shall be reviewed by the City Council.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 6, 2014.

ADOPTED by the City Council of the City of Newberg, Oregon, this 5th day of May, 2014.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 8th day of May, 2014.

Bob Andrews, Mayor