



**CITY COUNCIL AGENDA
OCTOBER 6, 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. CONSENT CALENDAR

1. Consider a motion approving the September 15, 2014 City Council meeting minutes. (Pages 1-7)
2. Approve content of the 2014-2015 Notice of Funding Availability from the Newberg Affordable Housing Trust Fund. (Pages 8-12)

VII. PUBLIC HEARING

1. Consider a motion adopting **Ordinance No. 2014-2777**, Establishing a Tax on the Sale of Marijuana and Marijuana-Infused Products in the city of Newberg. (Pages 13-22)

VIII. NEW BUSINESS

1. Consider a motion to Lift the Moratorium on Enforcement of the Temporary and Portable Sign Provision of the Newberg Development Code and Instruct City Staff to Resume Enforcement. (Page 23)

VIII. COUNCIL BUSINESS

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.

IV. EXECUTIVE SESSIONS

1. Executive session pursuant to ORS 192.660(2)(e) Real Property Transactions and (h) Rights and Duties regarding litigation likely to be filed.
2. Executive session pursuant to ORS 285C.145 (4) regarding an Enterprise Zone Application.

X. 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 two business days 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. Written testimony can be submitted to the Council the night of the meeting except for a land use hearing process, which has different guidelines.

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: October 6, 2014

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

SUBJECT: Minutes

**Contact Person (Preparer) for this
Motion: Sue Ryan, Interim City Recorder
Dept.: Administration
File No.:**

RECOMMENDATION:

Approve City Council minutes from September 15th, 2014

CITY COUNCIL MINUTES
SEPTEMBER 15, 2014, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)

A work session was held at 6:00 p.m. preceding the meeting. Department head reports were presented.

Dawn Wilson, Human Resources Director said an ad-hoc committee was working on revising the Employee Handbook and several recruitments were underway in many departments.

Police Chief Brian Casey said the department had a busy summer with many events, thanked the reserve department for all of their contributions in supplementing the Police Department with their work including the recent George Fox football games, they had been working on crosswalk violations and warnings and a community outreach program.

Steve Olson, Interim Director of Planning and Building spoke about his department's activities. He said this included a grant for downtown revitalization, the temporary signs development code amendment, planning for a new apartment building, the grand opening of Deskins Commons and a tour by the Planning Commission of the facility, housing rehabilitation grant work, that the Historic Preservation Committee was underway with its meetings and Newberg had been designated officially as a Certified Local Government.

Dave Brooks, IT director said security replacements were underway for the Police Department followed by the Fire Department, the website upgrade was in the design concept stage, the Planning Department was moving their Building Permit software to the state version, software bug work was underway and security upgrade work was underway, water and sewer operations software was being upgraded including monitoring software, a global wireless network upgrade was being done and a new spam filter was going online to block spam emails.

Fire Chief Les Hallman said the Estacada fire was pulling in Newberg Fire, fire calls were up, Fire Prevention week was coming up in October, George Fox activities.

Library Director Leah Griffith said money was received for Books for Newborn program, strategic planning had begun, December Open House session, integration work underway to regional library system, studying an RFID system for the future, building remodel work both interior and exterior, increase in check-outs and use of the self checkout system, programs and attendance.

Public Works Director Jay Harris said summer help had helped with lots of work including pavement sealing and cleaning up around the Archives Building, smoke testing had just finished, planning for winter storms road work and snowplow routes, pump testing, well work and needed improvements, new staff, utility relocation work for the Newberg-Dundee Bypass project, work on College Street half street improvements and the Springs divestiture update.

Jessica Pelz presented information on the Newberg Industrial Urban Growth Boundary Economic Opportunities Analysis.

All Councilors, the Mayor, City Manager, City Attorney, Department Heads and the Interim City Recorder were present. No action was taken and no decisions were made.

I. CALL MEETING TO ORDER

Mayor Andrews called the meeting to order at 7:00 p.m.

II. ROLL CALL

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

Staff Present: Jacque Betz, City Manager Truman Stone, City Attorney
Sue Ryan, Interim City Recorder

Also Present: Scott Essin, Sarah Grider, Robert Soppe, and Karen Engstrom,

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Ms. Jacque Betz, City Manager, said her report had been sent to the Council yesterday and there was nothing else to report.

V. PUBLIC COMMENTS

Karen Engstrom said she was here to complain about the Chehalem Valley Youth Services treatment houses and vandalism of her home and behavior of their residences.

Councilor McKinney wanted to know about the city's response to this issue.

City Manager Jacque Betz said the issue is planned for a discussion during the October 20 City Council meeting executive session.

Councilor Bacon suggested Ms. Engstrom approach the Chehalem board. Ms. Engstrom said the issues had been going on for 7 years. Councilor Corey said this is a concern the City is taking the issue seriously. Councilor McKinney asked if their board had been involved in the issue. City Attorney Truman Stone said during the last month that they had met with the executive director about ongoing issues.

Robert Soppe said he had concerns over the amount of parking being inadequate at George Fox University football games. His concern related to the calculation of parking spaces and the definitions in the City's Municipal Code. He was concerned about the availability of the agenda. He said on there was inaccurate information about submitting written testimony.

There was a brief discussion on the parking issues raised by Mr. Soppe.

VII. CONSENT CALENDAR

1. Consider a motion approving the September 2, 2014 City Council meeting minutes.
2. Consider a motion approving a sound permit application for Newberg Downtown Coalition and Newberg Early Bird Rotary for the 2014 Newberg Oktoberfest Event.
3. Consider a motion approving Resolution No. 2014-3166, A Resolution adopting the amendment to the Collective Bargaining Agreement Between the City and The Newberg-Dundee Public Safety Association, and authorizing the City Manager to extend the current contract an additional 60-days, through November 30, 2014, as well as delegating the authority to make such amendment on behalf of the City.

MOTION: Woodruff/Bacon moved to approve the September 2nd, 2014 City Council meeting minutes , approving the sound permit application for Newberg Downtown Coalition and Newberg Early Bird Rotary for the 2014 Newberg Oktoberfest Event, approving Resolution No. 2014-3166, a resolution adopting the amendment to the Collective Bargaining Agreement Between the City and the Newberg-Dundee Public Safety Association, and authorizing the City Manager to extend the current contract an additional 60-days, through November 30, 2014, as well as delegating the authority to make such amendment on behalf of the City.
Motion carried (7 Yes/0 No)

VIII. PUBLIC HEARING

None.

IX. NEW BUSINESS

1. Resolution No. 2014-3158: PWS Director Harris said this resolution was part of the first phase of the Bypass project. He said that ODOT's engineering design showed that the construction work could impact the pipe. He said this resolution approves replacing the pipe with a larger diameter pipe. He said the cost share would be 95 % ODOT and the City would pay 5%.

There was a discussion on the size of the pipe. Councilor McKinney asked about 15 % for the contingency on the contract. PWS Director Harris explained why they had budgeted that percentage. There was a discussion on whether ODOT would pay any overages or whether the City would. PWS Director Harris said the City was only responsible for the pipe diameter increase and the fill back for the difference in the pipe size.

There was additional discussion about the size of the pipe and who would pay for what on any change orders. PWS Director Harris said it would be 5% of the whole contract not individual change orders. He said the cost of Parametrix's design was also 5%. There was discussion on why the pipe was a larger diameter, its location and how that could provide for additional development and growth in the area.

MOTION: Rierison/Bacon moved to adopt Resolution No. 2014-3158, a resolution to authorize the City Manager to enter into a construction contract with K&E Excavating, Inc. for the 11th and 12th Street Sewer Project in the amount of \$1,292,729.25 and to also negotiate and approve any needed construction change order not to exceed 15 percent of the proposed contract amount.
Motion carried (7 Yes/0 No)

2. Resolution No. 2014-3159: City Manager Jacque Betz said this resolution is a housekeeping item to ensure someone is in charge when she is not in town and on vacation. She said the suggestion was for the City Attorney to be the City Manager Pro-Tem in her absence. She suggested in the City Attorney's absence the Police Chief or Fire Chief could be in charge.

There was discussion on the lineal succession and the wording of the resolution. There was discussion on the succession could work in the case of an emergency.

Councilor Howard said he was uncomfortable with this to delegate the selection of the Pro Tem to anyone but the City Council. He said was not comfortable with saying the city attorney can select the city manager pro tem. He said he was not comfortable with the City Manager appointing a Pro Tem of their own choosing. He said the City Council needs to be the authority on the matter.

Councilor McKinney said his concern is in the event of an emergency how difficult procedurally it would be for the City Council to convene and make such a decision. There was discussion on previous lines of succession and how the procedure could be simplified. Mayor Andrews said under double ii after the comma instead of City Attorney you substitute the wording "City Manager."

Mayor Andrews moved to adopt the resolution with the following amended language. He said to create a new paragraph 1. He said to renumber 1 to 2, 2 to 3, 3 to 4. He said under Item 2 double ii that "If the city attorney cannot act as manager pro tem, the Council will designate a manager pro tem." instead of the original language of the City Attorney designating a manager pro tem.

Councilor Rierson accepted the second amendment.

There was discussion on previous resolutions that established a line of command during past years. There was discussion about the reasons behind why the succession was being updated and the reasons for those previous successions.

CA Stone restated the resolution amendments as adding a new paragraph 1 under the section The City of Newberg resolves as follows: "The City Council repeals Resolution 2013-3053 and all other resolutions designating a manager pro-tem."

There was a discussion on the renumbering of the paragraphs.

CA Stone said under Paragraph 3, subsection ii, the change would read "If the city attorney cannot act as manager pro tem, the city manager will designate a manager pro tem."

MOTION: Andrews/Rierson adopting Resolution No. 2014-3159 as amended repealing Resolution No. 2013-3053; authorize the City Manager Pro Tem designation for short-term absence of City Manager as well as a subsequent chain of command. Motion carried (6 Yes/1 No [Howard])

X. COUNCIL BUSINESS

Mayor Andrews said he had received an anonymous phone call complimenting the display of flags on 9-11.

Councilor Woodruff asked the Council to support the FISH food bank remodel. There was a discussion on the fundraising for the project. CM Betz asked for a written request from the Ford Family Foundation project to research it further. There was discussion on the request and how it could be funded.

Councilor Rierson said the landscaping at the Springbrook Fire Station # 21 looked very poor was handled by Public Works. He asked City Manager Betz to follow up on it. She said Mr. Harris was working on the issue.

Councilor Howard said he was running for elected office. He was concerned about the quantity of campaign signs and the City was following a non-enforcement policy on the signs. He said it was giving an unfair advantage to those candidates who were not following the City Municipal Code on the issue.

There was discussion on the issue of temporary and portable signs and prior action by the Council on the issue.

Interim Planning and Building Director Olson said it would go before the Planning Commission in November. There was further discussion on the issue and the moratorium being in place for business signs but not being applicable to the current discussion on election signs. There was discussion about this not being an agenda item to give the public notice of the potential change in enforcement.

There was further discussion on the size and type of signs. There was discussion on the moratorium on enforcement having gone into effect in June of 2013. Councilor Woodruff clarified that the Ad-Hoc Temporary and Portable Sign committee did intentionally not make any changes to the category of election signs. Mayor Andrews asked the Council if they wished to lift the moratorium and for a motion to take action. There was discussion on who had election signs up as several members of the Council are currently running for re-election. Councilor McKinney said the moratorium was put into place because of business needs.

MOTION: Rierson/ directing staff bring the issue of political signs to the Council for discussion at their next meeting. Motion rescinded

CA Stone said political signs are a type of sign not political due to content. He said they are within the temporary sign provision but enforcement cannot be based on content only on size and location. Rierson rescinded his motion.

IPBD Olson said election sign posting was in effect from 60 days before to 60 days after the election. He said the only way to identify them was based on content, which they can't do. CA Stone said if the Council wanted us to lift the moratorium then direct staff to bring it back on a future agenda.

There was discussion on intent and time for staff to do the research for the item. CM Betz said it would be put on the October 6 agenda and it would be a joint effort by CA Stone and IDBP Olson.

MOTION: Bacon/Howard directing staff to bring back a request for action to their October 6, 2014 Council meeting so the City could lift the moratorium on enforcing the temporary and portable signs section of the Newberg Municipal Code. (7 Yes/0 No)

Mayor Andrews brought up taxing marijuana distribution within the city limits. He asked if the City wanted to take action before the November 4 election.

There was a discussion on the uncertainty of the issue and that taxation could not be allowed under Ballot Measure 91.

CA Stone summarized the ballot measure. He said the idea to pass a local ordinance on a marijuana product tax is to be pre-emptive. He said it could be grandfathered in as the local ordinance would be passed before the general election and the potential passage of Ballot Measure 91. He said there had been additional discussion on the issue of uniformity throughout the state.

There was further discussion on what the potential response could be from the state to local ordinances on product taxation, what action the Council should pursue, potential impacts to Public Safety, possible revenue, black market competition and the city's revenue needs.

There was discussion on the procedure of passing an ordinance with one reading and an emergency clause.

MOTION: Andrews/Rierson directing staff to bring an Request for Council Action to Council to assess a tax on the sale of marijuana (6 Yes/0 No/1 Abstain [McKinney])

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 – Urban Growth Boundary Mediation. The Council entered executive session at 9:20 p.m. The Council re-entered open session at 10:10 p.m.

XI. ADJOURNMENT

The meeting adjourned at 10:11 p.m.

ADOPTED by the Newberg City Council this 6th day of October, 2014.

Sue Ryan, Interim City Recorder

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

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 6, 2014

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

SUBJECT: *2014-2015 NOFA (Notice of Funding Availability) from the NAHTF (Newberg Affordable Housing Trust Fund).*

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

RECOMMENDATION: Approve content of the 2014-2015 NOFA from the NAHTF (please see Exhibit A).

EXECUTIVE SUMMARY: Resolution No. 2012-2988 established the policies and procedures for the administration of the NAHTF. Section 5.4 states that “The City of Newberg shall annually issue a notice of funding availability (NOFA) to announce the availability of funds. The City shall also issue a request for proposals (RFP) for affordable housing projects that are not time sensitive.”

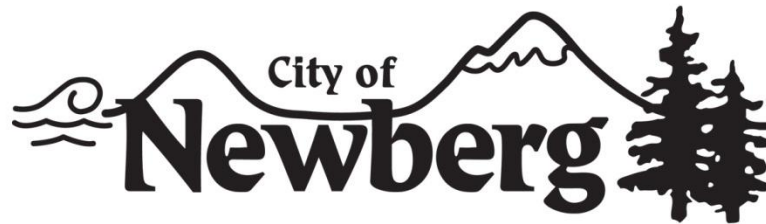
On August 26, 2014, the Affordable Housing Commission (AHC) approved a draft of the 2014-2015 NOFA as shown in Exhibit A. As stated in Section 5.7 of Resolution No. 2012-2988, the “...the commission shall meet annually to prepare the NAHTF’s annual NOFA and RFP for consideration of approval by the city council.”

The only substantive change in the proposed NOFA compared to the 2013 -2014 NOFA is the exclusion of language regarding a competitive grant/loan program. Section 5.6 of Resolution No. 2012-2988 states that “In any given year, at least 50% of the available funds within the NAHTF shall be available for use through the competitive awards program. The AHC has recommended the exclusion of this language for the following reasons: (1) awarding grants of sufficient substance to be effective will continue to reduce the principal funds of the NAHTF; and, (2) the city should focus on finding ways to increase the size of the NAHTF (currently around \$80,000) till it is large enough to overcome the problems stated in the first point. Staff believes that this action is allowed through Section 5.6 of Resolution No. 2012-2988 which states the following: “In any given year, at least 50% of the available funds within the NAHTF shall be available for use through the competitive awards program. In any given year, the city council may make an exception to this standard to take advantage of affordable housing opportunities.” If the draft NOFA is approved, there will be no need to issue an RFP this fiscal year for affordable housing projects.

FISCAL IMPACT: No immediate impact.

STRATEGIC ASSESSMENT: Accepting the draft NOFA would protect the principal of the NAHTF while still making loans available to assist with local affordable housing projects. It will also allow the AHC to focus its time and energy on exploring ways in which to increase the size of the HAHTF.

Release Date: TBD



Notice of Funding Availability Newberg Affordable Housing Trust Fund Fiscal Year 2014 - 2015

This Notice of Funding Availability (NOFA) is directed to organizations (non-profit and for-profit) and individuals that provide affordable housing and/or related services within the City of Newberg. The goal of this NOFA is to inform the intended audience of the availability of funds to assist with activities that will assist with the creation/acquisition of new affordable housing or the maintenance of existing affordable housing inventory within the community.

Funding Availability by Program

Funding is available for the fiscal year ending June 30, 2015 for the following programs:

Rental Rehabilitation Loan Program: Up to \$64,000 is available for this program. This program provides loans to landlords so they can rehabilitate dwellings and make them safe and decent for rental to low or very low income families. Loans are available in amounts ranging between \$5,000 and \$15,000, and may be increased up to \$25,000 if justified. The standard loan term is seven years. The standard interest rate is 2% below prime rate. Applicants seeking funding assistance must be willing to enter into a contractual agreement with the city that will ensure the future affordability of the project units for a specific period of time. Applications will be accepted at any time during the fiscal year.

Time Sensitive Loan Program: Up to \$64,000 is available for this program. This program offers loans for projects that create, acquire, or retain affordable housing in the community that have particular needs that are opportunity driven and time sensitive. The standard loan term is two years. The standard interest rate is 2% below prime rate. These funds are available on a first come/first served basis, subject to approval.

What is the Newberg Affordable Housing Trust Fund (NAHTF)?

The NAHTF is a financial resource intended to support the development, preservation, and rehabilitation of affordable housing that is affordable to the citizens of Newberg. The primary purpose of the NAHTF is to encourage the development, preservation, and rehabilitation of housing for homeownership or rent, at a cost that will enable very low, low and moderate-income families to afford quality housing while paying no more than thirty percent of gross household income on housing. To promote the rehabilitation, preservation and production of quality, well-designed rental and ownership housing, the NAHTF will award funds to community development partners that are furthering the NAHTF mission. It is expected that the local contributions made through Newberg's Affordable Housing Trust Fund will maximize the leveraging of state and federal funds, as well as encourage private sector investment in affordable housing.

The City of Newberg defines affordable housing as residential housing primarily for households or persons earning less than 100% of the median area income and where housing and/or rental costs do not constitute more than 30% of a household's income.

How was the NAHTF created?

The creation of a NAHTF was a proposal identified in the Newberg Affordable Housing Action Plan. This Plan was created by an ad-hoc committee created by the Newberg City Council, which consisted of from a wide range in interests in community interested in the development and preservation of affordable housing. The Plan was adopted by Council via Resolution No. 2009-2843. A subsequent Newberg Affordable Housing Action Committee was appointed by the City Council to further develop the action items listed in the Plan, including the creation of an affordable housing trust fund. The Committee created a multiple documents for consideration of adoption by the Council. In 2012, the Council adopted Ordinance No. 2012-2749, establishing the NAHTF as well as Resolution No. 2012-2988, establishing the policies and procedures for the administration of the NAHTF.

Who can access funding from the NAHTF?

Eligible recipients of resources from the NAHTF are organizations with interests in developing and/or preserving affordable housing in Newberg. Potential recipients include governmental subdivisions, community development corporations, local housing authorities, community action agencies, community-based or neighborhood-based non-profit housing organizations, other non-profit organizations, for-profit entities and private employers, and private landlords.

What types of projects qualify for funding under the NAHTF?

The Newberg Affordable Housing Trust Funds can be provided as either a grant or a loan depending on the project or program receiving funding. To retain a significant degree of flexibility, the eligible uses have a broad application including the following:

Acquisition and construction of new affordable housing. Eligible acquisition and construction costs include reasonable costs associated with building or land purchase, including but not limited to:

- Purchase price
- Option costs
- Financing fees
- Appraisal costs
- Closing costs
- Interest
- Inspection fees
- Title insurance
- Relocation costs
- Architectural/engineering fees
- Permit fees
- System development charges
- Construction costs

Conservation of energy through the use of “green” technologies provided that the benefits of the energy savings is passed on in the form of reduced costs to the qualified occupants of the affordable housing.

Land banking to include the purchase of land to be dedicated toward the development of affordable housing in the near or long-term.

Predevelopment activities undertaken by a community development organization in support of the development of affordable housing including planning, architectural services, engineering services, landscape design, legal services, surveys, appraisals, site clearance and demolition, environmental clearance, permit application fees and system development charges. Grant funding for these types of activities may be required to convert to a loan if the project receives full funding. For-profit developers are not eligible to apply for Newberg’s Affordable Housing Trust Funds to assist with predevelopment costs.

Bridge loans to assist in development of affordable housing (for rental or owner occupancy). Bridge loans are intended to provide funding to permit housing projects to proceed in advance of the availability of permanent project funding. Bridge loan funding is available for acquisition or construction activities.

Capacity building for non-profit affordable housing providers in the form of direct grant awards to fund administration of an affordable housing project or program.

Rehabilitation and emergency repairs as part of an established program to secure units as affordable or to provide direct benefits to existing very low to moderate income households. Eligible rehabilitation and emergency repair costs include but are not limited to:

- Architectural/engineering fees

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

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

Direct benefits to very low to moderate income households through an established program including down payment assistance, rental assistance, mortgage foreclosure prevention, emergency housing vouchers, homeownership training, renter education, or other programs intended to increase housing opportunities for Newberg's low to moderate income residents.

Transitional and emergency housing for homeless individuals and families through an established program to move people toward self-sufficiency.

Educational programs and services for potential home owners and renters.

Other uses as deemed appropriate by the Newberg City Council as supporting the development or preservation of affordable housing within the City of Newberg.

How does one apply for funding under the NAHTF?

The application form for funding under the NAHTF can be found at (city website link) or may be picked up at the Newberg City Hall at 414 E. First Street.

Who do I contact with questions about the NAHTF?

For questions about the NAHTF, please contact David Beam at 503-537-1213 or at david.beam@newbergoregon.gov, P.O. Box 970 Newberg, OR 97132

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 6, 2014

Order ___ Ordinance XX Resolution ___ Motion ___ Information ___
No. No. 2014-2777 No.

SUBJECT: An Ordinance Establishing a Tax on the Sale of Marijuana and Marijuana-Infused Products in the city of Newberg.

Contact Person (Preparer) for this Motion: Truman A. Stone, City Attorney
Dept.: City Attorney's Office
File No.:

HEARING TYPE: LEGISLATIVE QUASI-JUDICIAL NOT APPLICABLE

RECOMMENDATION:

This Ordinance was prepared by the City Attorney at the request of the Council.

EXECUTIVE SUMMARY:

This ordinance and summary is taken largely from the City of Central Point, the assistance of which is acknowledged and appreciated.

November's general election will include Oregon Ballot Measure 91 (officially known as the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act). Section #42 of this ballot measure is specifically aimed at limiting local government's ability to offset public safety-related impacts/costs by collecting a product tax on marijuana-based products. Section #42's language is as follows:

No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.

Because this language does not specifically repeal a local marijuana tax in effect at the time of the measure's passage, and because this language can be interpreted to read "No county or city of this state shall [after the effective date of this measure] impose any fee or tax..." it can be argued that this initiative's language would not pre-empt a taxation ordinance if it is adopted by the City Council prior to November's election. City Council adoption does not guarantee that this product tax would not be legally challenged; however, absent invalidation by a state court, this product tax ordinance would survive voter approval of ballot initiative #53, and not adopting the ordinance prior to November, should the initiative pass, would certainly preclude future action on this matter.

The ordinance presented for Council consideration is a gross receipts tax on the sale of marijuana, medical marijuana and marijuana-infused products. A gross receipts tax is applied to the total gross taxable revenues of a business. It is similar to a sales tax except that it is levied on the seller rather than the purchaser. The seller is responsible for maintaining accurate records of its gross revenues from taxable goods and services and then remitting a percentage to the taxing entity. Many businesses that are subject to a gross receipts tax will show the tax on the bill of sale they present to the customer, but it is still the business that is responsible for paying it. Newberg's transient lodging tax is a gross receipts tax. A gross receipts tax has the administrative advantages of ease of collection and ease of auditing.

The proposed ordinance relies heavily on the ordinance adopted by the City of Central Point. The Central Point ordinance was based on those adopted by several Colorado cities and the City of Ashland.

Separate tax rates are set for medical (5%) and recreational (10%) marijuana. These rates mirror those that seem to be most commonly adopted by other cities in Oregon. A common concern expressed is that imposing too great of a tax on regulated marijuana would create greater demand in the black market. Adopting a tax in line with other cities would be less open to opposition than a tax outside of the common range.

This Ordinance contains an emergency clause and would be effective upon passage.

FISCAL IMPACT:

The ordinance allows the seller to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance. It is uncertain what amounts could be expected from this tax.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

The Council asked the City Attorney to draft an ordinance for the taxation of the sale of marijuana for Council consideration.



ORDINANCE No. 2014-2777

AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA
AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF NEWBERG

RECITALS:

1. **WHEREAS**, Chapter II, Section 5 of the Newberg City Charter provides: **POWERS**. The city has all powers that the constitutions, statutes and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.
2. **WHEREAS**, the city desires to tax the sale or transfer of marijuana and marijuana-infused products within the city.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. **SECTION 1.** Title 3 Revenue and Finance of the Newberg Municipal Code hereby adds a new Chapter 3.40, establishing a tax on the sale of marijuana and marijuana-infused products, as follows:

SECTION 3.40.010 Purpose.

For the purposes of this chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the city of Newberg is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

SECTION 3.40.020 Definitions.

When not clearly otherwise indicated by the context, the following words and phrases as used in this chapter shall have the following meanings:

- A. "Director" means the Director of Finance for the city of Newberg or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.
- C. "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- D. "Oregon Medical Marijuana Program" means the office within the Oregon Health

authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.

E. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

F. "Purchase or Sale" means the acquisition or furnishing for consideration by any person of marijuana within the city.

G. "Purchaser" means any person who acquires marijuana from a seller for any valuable consideration.

H. "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

I. "Retail sale" means the transfer of goods or services in exchange for any valuable consideration.

J. "Seller" means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.

K. "Tax" means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.

L. "Taxpayer" means any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

SECTION 3.40.030 Levy of Tax.

A. There is hereby levied and shall be paid a tax by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter.

B. The amount of tax levied is as follows:

- 1) Five percent (5%) of the gross sale amount paid to the seller by a registry identification cardholder.
- 2) Ten percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who are not purchasing marijuana under the Oregon Medical Marijuana Program.

C. The purchaser shall pay the tax to the seller at the time of the purchase or sale of marijuana.

SECTION 3.40.040 Deductions.

The following deductions shall be allowed against sales received by the seller providing marijuana:

A. Refunds of sales actually returned to any purchaser;

B. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

SECTION 3.40.050 Seller Responsible For Payment Of Tax.

A. Every seller shall, on or before the fifteenth (15th) day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the city, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Director may establish shorter reporting periods for any seller if the seller or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director. The quarters are:

First quarter: January, February, March

Second quarter: April, May, June

Third quarter: July, August, September

Fourth quarter: October, November, December

B. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the city. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

C. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the city in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any seller if the Director deems it necessary in order to ensure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the city until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.

D. For good cause, the Director may extend the time for filing a return or paying the tax for not more than one month. Further extension may be granted only by the City Council. A seller to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid by the end of the extension granted, the interest shall become a part of the tax for computation of penalties prescribed in Section 3.30.060.

- E. Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.
- F. Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.

SECTION 3.40.060 Penalties And Interest.

- A. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax.
- B. Any seller who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- C. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs A and B of this section.
- D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.
- F. A seller who fails to remit the tax within the required time may petition the City Manager for waiver and refund of the penalty or a portion of it. The manager may, if good cause is shown, direct a refund of the penalty or a portion of it. Any such hearing will be conducted under the procedures described in section 3.30.080.

SECTION 3.40.070 Failure To Report and Remit Tax –Determination of Tax by Director.

If any seller should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this chapter. In case such when a determination is made, the Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may appeal such determination as provided in section 3.30.080. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

SECTION 3.40.080 Appeal and Redetermination.

- A. Any person against whom a determination is made under NMC 3.40.070 or any person directly interested in the determination may petition for a redetermination, within 15 days after service of the notice described in NMC 3.40.070. If no petition is filed, the determination shall become final at the expiration of the allowable time.
- B. If a petition for redetermination is filed within the allowable time period, the City Manager shall reconsider the determination, and, if the person has so requested in the person's petition, shall grant the person an oral hearing and shall give the person 10 days' notice of the time and place of the hearing. The City Manager may continue the hearing from time to time as necessary.
- C. The City Manager may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, the increase shall be payable immediately after the hearing.
- D. The order or decision of the City Manager upon a petition for redetermination shall become final 10 days after service upon the petitioner of notice, unless appeal of such order or decision is filed with the city council within 10 days after service of such notice. An appeal fee of \$250 shall be paid at the time the notice of appeal to the city council is filed.
- E. No petition for redetermination or appeal therefrom shall be effective for any purpose unless the seller first deposits with the city the amount of tax determined to be owing pursuant to NMC 3.40.070. Refunds, if any, will be processed under NMC 3.40.090.

SECTION 3.40.090. Refunds.

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the city under this chapter, it may be refunded as provided in subparagraph B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
- B. The Director shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify the Director of claimant's choice no later than 15 days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the 15 day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

- C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

SECTION 3.40.100 Actions to Collect.

Any tax required to be paid by any seller under the provisions of this chapter shall be deemed a debt owed by the seller to the city. Any such tax collected by a seller which has not been paid to the city shall be deemed a debt owed by the seller to the city. Within three years after the tax becomes payable or within three years after a determination becomes final, the city may bring an action in the name of the city in the courts of this state, another state or the United States to collect the amount delinquent and penalties and interest. In lieu of filing an action for the recovery, the city, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the city has complied with the provisions set forth in ORS 697.105 (as hereafter amended), in the event the city turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

SECTION 3.40.110 Penalties.

- A. It is unlawful for any seller or any other person so required to fail or refuse to furnish any return required to be made, or fail or refuse to furnish the supplementary return or other data required by the Director or to enter a false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this chapter.
- B. Violation of any provision of this chapter of this code shall constitute a Class 1 civil infraction and be enforced under the provisions of NMC Chapter 2.30. Every day in which the violation is caused or permitted to exist constitutes a separate infraction, and the punishment therefor shall be in addition to any other penalty, interest, sum or charge imposed by this code or this chapter. Delinquent taxes and fees, penalty and interest imposed by this chapter and this code may be collected in a civil action.
- C. The remedies provided by this section are not exclusive and shall not prevent the city from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

SECTION 3.40.120 Confidentiality.

Except as otherwise required by law, it shall be unlawful for the city, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the city under the terms of this chapter. Nothing in this section shall prohibit:

- A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or
- B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or

- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due to the city under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds five thousand dollars (\$5,000). The City council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

SECTION 3.40.130 Audit of Books, Records or Persons.

- A. It shall be the duty of every seller liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years and six months, all records, books, reports, income tax reports and other matters required by this chapter as may be necessary to determine the amount of such tax as the seller may have been liable for the collection of and payment to the city, which records the Director shall have the right to inspect at all reasonable times as set forth below. Every operator shall maintain records of marijuana purchase and sales, accounting books and records of income. Sellers must, at a minimum, include a cash receipt and deposit journal, and a cash disbursements journal/check register for all authorized deductions. These records and books shall reconcile to the tax reports and be auditable. They shall also reconcile to the seller's income tax reports. If the Director finds the books and records of the seller are deficient in that they do not provide adequate support for tax reports filed, or the seller's accounting system is not auditable, it shall be the responsibility of the seller to improve its accounting system to the satisfaction of the Director.
- B. The city, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the city for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records shall be made available within the city limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Newberg Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

SECTION 3.40.140 Forms And Regulations.

A. The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said medical marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- 1) A form of report on sales and purchases to be supplied to all vendors;
- 2) The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this chapter.

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding any amendment/repeal, the city ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

SECTION 4. Codification. Provisions of this Ordinance shall be incorporated in the city code and the word "ordinance" may be changed to "code", "article", "section", "chapter" or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections 2-4) need not be codified and the city recorder is authorized to correct any cross-references and any typographical errors.

2. **EMERGENCY CLAUSE:**

The City Council declares that an emergency exists because the time frame for action is proscribed by a potential change to state law. Therefore, it would be in the best interest of the Newberg citizens if this emergency was declared and this ordinance takes effect the day of its passage, which is October 6, 2014. This emergency is declared by the authority of Section 18 of the Newberg City Charter.

➤ **EFFECTIVE DATE** of this ordinance, which is: October 6, 2014.

ADOPTED by the City Council of the City of Newberg, Oregon, this 6th day of October, 2014, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Sue Ryan, Interim City Recorder

ATTEST by the Mayor this 7th day of October, 2014.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 6, 2014

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

SUBJECT: Motion to Lift the Moratorium on Enforcement of the Temporary and Portable Sign Provisions of the Newberg Development Code and Instructs City Staff to Resume Enforcement.

Contact Person (Preparer) for this
Motion: Truman A. Stone
Dept.: City Attorney's office
File No.:

RECOMMENDATION:

Motion to Lift the Moratorium on Enforcement of the Temporary and Portable Sign Provisions of the Newberg Development Code and Instructs City Staff to Resume Enforcement, effective October 6, 2014.

RECOMMENDED MOTION: I move, that the moratorium on enforcement of the Temporary and Portable Sign Provisions of the Newberg Development Code be rescinded and that city staff resume enforcement. The council affirms the city's policy of seeking voluntary compliance with city ordinances through education, and utilizing additional enforcement alternatives when necessary.

EXECUTIVE SUMMARY:

At the May 6, 2013 council meeting, business owners expressed concern about the limitations under the current sign code. As a result, the council directed that the temporary sign provisions not be enforced for a period of 60 days to review the code. On June 17, 2013, the council held a work session on portable and temporary signs. At the July 15, 2013 council meeting, the council asked for continued reduced enforcement to allow for an ad-hoc group to explore the issues surrounding temporary and portable signs.

At the October 7, 2013 council meeting, Resolution 2013-3080 created the Temporary and Portable Sign Ad-Hoc Committee, consisting of citizens and business owners and supported by city staff. At the July 21, 2014 council meeting, the council adopted Resolution 2014-3161, accepting the committee's recommendations and initiating the development code amendment process. Proposed code amendments have been referred to the Planning Commission.

During the period of reduced sign code enforcement, many portable and temporary signs have appeared in the community, which are not in compliance with the current sign code.

At the September 15, 2014 council meeting, the council expressed the desire for the city to resume enforcement of the portable and temporary sign provisions of the sign code and directed the city attorney's office to prepare a motion for the council's consideration.

FISCAL IMPACT: None.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

Motion is brought at the direction of the Council.