



**CITY COUNCIL AGENDA  
AUGUST 19, 2013  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

**I. CALL MEETING TO ORDER**

**II. ROLL CALL**

**III. PLEDGE OF ALLEGIANCE**

**IV. CITY MANAGER'S REPORT**

**V. COUNCIL APPOINTMENTS**

1. Consider a motion appointing Sulamita Barbiyeru to the Planning Commission as the Student Planning Commissioner for a term expiring May 30, 2014. (Pg. 3)
2. Consider a motion appointing David Venable to the Traffic Safety Commission for a term expiring December 31, 2015. (Pg. 5)

**VI. PUBLIC COMMENTS**

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

**VII. CONSENT CALENDAR**

1. Consider a motion adopting **Resolution No. 2013-3068** authorizing the city manager to negotiate and execute an Intergovernmental Agreement with the State of Oregon to upgrade and replace ADA ramps. (Pgs. 7-15)
2. Consider a motion adopting **Resolution No. 2013-3071** authorizing the city manager to execute an amendment to the Intergovernmental Agreement with the State of Oregon to exchange federal funds for state funds. (Pgs. 17-38)
3. Consider a motion adopting **Resolution No. 2013-3072** authorizing the city manager to execute an amendment to the Intergovernmental Agreement with ODOT for the sidewalk and bike lane improvements on N. College Street. (Pgs. 39-64)
4. Consider a motion adopting **Resolution No. 2013-3073** initiating a Newberg Transportation System Plan amendment to reflect the Newberg-Dundee Bypass Phase I Alignment. (Pgs. 65-75)
5. Consider a motion approving the July 15, 2013, City Council meeting minutes. (Pgs. 77-80)

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.

## VIII. PUBLIC HEARINGS

Consider a motion adopting **Ordinance No. 2013-2763** amending the Newberg Development Code adopting a new Zone Use Table. (Pgs. 81-187)  
**(Legislative Hearing)**

## IX. NEW BUSINESS

1. Consider a motion adopting **Resolution No. 2013-3069** authorizing the city manager to enter into a construction contract for the Sheridan Street and Chehalem Cultural Center Forecourt Project.  
**(Material to be sent as supplemental material under separate cover)**
2. Consider a motion adopting **Resolution No. 2013-3070** authorizing the city manager to execute an Intergovernmental Agreement with Chehalem Park and Recreation District (CPRD) for cost sharing of the Sheridan Street and Chehalem Cultural Center Forecourt Project.  
**(Material to be sent as supplemental material under separate cover)**

## X. COUNCIL BUSINESS

Consider a motion directing staff to work with Debbie Headley to install a Peace Pole at Francis Square.

## XI. 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: August 19, 2013

Order \_\_\_      Ordinance \_\_\_      Resolution \_\_\_      Motion XX      Information \_\_\_  
No.              No.                      No.

**SUBJECT: Appoint Sulamita Barbiyeru to the City of Newberg Planning Commission as the student member.**

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

## RECOMMENDATION:

To consent to the appointment, by the Mayor, of Sulamita Barbiyeru for the Student Planning Commissioner position with a term expiring May 31, 2014, on the Newberg Planning Commission.

## EXECUTIVE SUMMARY:

The Newberg Planning Commission is an eight member committee that has one position designated as a non-voting student member with a term expiring May 31, 2013. Public notice of this vacancy was posted in City buildings, advertised in the local paper, and posted on the City's website, and sent to the local high schools. The application was considered and the Mayor has selected Sulamita Barbiyeru to fill the position.

For privacy purposes, the original application is retained in the City Recorder's Office. Please call (503) 537-1283 to request a copy.

## FISCAL IMPACT:

None

## STRATEGIC ASSESSMENT:

The Newberg Planning Commission serves a very important role in the betterment of our community and downtown.

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 18, 2013

Order \_\_\_      Ordinance \_\_\_      Resolution \_\_\_      Motion XX      Information \_\_\_  
No.              No.                      No.                                                                \_\_\_

**SUBJECT: Appoint David Venable to the Newberg Traffic Safety Commission**

Contact Person (Preparer) for this Motion: Mayor Bob Andrews  
Dept.: Administration

## RECOMMENDATION:

To consent to the Mayor's appointment of David Venable to fill vacant positions on the Newberg Traffic Safety Commission, with a term ending December 31, 2015.

## EXECUTIVE SUMMARY:

The Newberg Traffic Safety Commission is a nine member committee with one student commissioner position. There is one commissioner position open with the resignation of Traffic Safety Commissioner Suzanne Stich, effective July, 2013. The Mayor has selected David Venable to fill the vacant full-time position, with the term ending December 31, 2015.

For privacy purposes, the original application is retained in the City Recorder's Office. Please call (503) 537-1283 to request a copy.

## FISCAL IMPACT:

None.

## STRATEGIC ASSESSMENT:

The Traffic Safety Commission provides a valuable service to the City of Newberg by promoting traffic safety through investigation, study and analysis of traffic safety programs; conducting educational efforts among the public in the matters of public safety; considering all traffic safety programs which are referred to them for recommendation by the City Council and making reports to the City Council on matters of traffic safety and traffic safety programs. The Traffic Safety Commission makes decisions regarding parking, crosswalks, safety zones, traffic lanes, truck routes and all manner of traffic control devices within the community.

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 19, 2013

Order \_\_\_      Ordinance \_\_      Resolution XX      Motion \_\_\_      Information \_\_\_  
No.              No.              No. 2013-3068

**SUBJECT: a resolution authorizing the city manager to negotiate and execute an Intergovernmental Agreement (IGA) with the State of Oregon to upgrade/replace ADA ramps, as a part of the ODOT Highway 99W Pavement Restoration Project**

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

**HEARING TYPE: ADMINISTRATIVE**

## RECOMMENDATION:

Adopt **Resolution No. 2013-3068.**

## EXECUTIVE SUMMARY:

During the summer of 2014, the Oregon Department of Transportation (ODOT) will be restoring the pavement surface on Highway 99W from N. Main Street in Newberg, west through Dundee, to approximately McDougall Road in Dayton.

As a part of the 2014 pavement restoration project, ODOT will be upgrading/replacing ADA ramps at the following intersections: 3<sup>rd</sup> Street at 99W (1 ramp), 99W and 2<sup>nd</sup> Street (2 ramps), Hancock Street and Lincoln Street (2 ramps), Hancock Street and Sheridan Street (4 ramps), First Street and Grant Street (4 ramps), and First Street at Main Street (1 ramp). Refer to Exhibit A in the attached ODOT IGA for the location of the proposed work.

ODOT is requesting permission to enter the City right-of-way to replace the aforementioned ADA Ramps. Attached is a draft copy of the proposed IGA labeled as Exhibit "A" which defines the terms and conditions of the City and ODOT to complete the proposed ADA improvements.

ODOT is currently completing the construction plans for the project. The construction bid opening for the project is currently scheduled for December of 2013. Construction of the improvements is planned for summer of 2014.

## FISCAL IMPACT:

The fiscal impact to the city is minimal as ODOT will be completing the all of the work necessary for the project. Costs to the city will include staff time to review documents, execute agreements, perform construction observation, and to maintain the new ADA ramp improvements.

## STRATEGIC ASSESSMENT:

The proposed pavement restoration and ADA enhancement project will improve the drivability of highway 99W and provide for enhanced pedestrian facilities in the city downtown area.



## RESOLUTION No. 2013-3068

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**A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON TO UPGRADE/REPLACE ADA RAMPS, AS A PART OF THE ODOT HIGHWAY 99W PAVEMENT RESTORATION PROJECT**

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### RECITALS:

1. During the summer of 2014, Oregon Department of Transportation (ODOT) will be restoring the pavement surface on Highway 99W from N. Main Street in Newberg, west through Dundee, to approximately McDougall Road in Dayton.
2. As a part of the 2014 pavement restoration project, ODOT will be upgrading/replacing ADA ramps at the corners of 99W and 3<sup>rd</sup> Street (1 ramp), 99W and 2<sup>nd</sup> Street (2 ramps), Hancock Street and Lincoln Street (2 ramps), Hancock Street and Sheridan Street (4 ramps), First Street and Grant Street (4 ramps), and First Street and Main Street (1 ramp).
3. ODOT is requesting permission to enter the city right-of-way to replace the aforementioned ADA ramps. A draft copy of the proposed Intergovernmental Agreement (IGA) defining project terms and conditions for the city and ODOT to complete the proposed ADA improvements is attached as Exhibit "A" and by this reference incorporated.
4. ODOT is currently completing the construction plans for the project. The construction bid opening for the project is currently scheduled for December, 2013. Construction of the improvements is planned for summer of 2014.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The Newberg City Council does hereby authorize the city manager to negotiate and execute an Intergovernmental Agreement with Oregon Department of Transportation providing the ADA ramp improvements as part of the pavement restoration project as attached in Exhibit "A", which is adopted and by this reference incorporated

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: August 20, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 19<sup>th</sup> day of August 2013.

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 22<sup>nd</sup> day of August 2013.

\_\_\_\_\_  
Bob Andrews, Mayor

## EXHIBIT "A"

### DRAFT DRAFT DRAFT

#### COOPERATIVE IMPROVEMENT AGREEMENT OR99W: OR 240 (Newberg) – OR 18 (McDougal Junction) Paving City of Newberg

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and the CITY OF NEWBERG, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

#### RECITALS

1. Oregon Route 99W, Oregon Route 240, and Oregon Route 18 are part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
2. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State, by ORS [366.220](#), is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS [373.020](#), the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with the Agency.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

#### TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to design and construct a pavement preservation project from mile point 23.76 to 29.79 on OR 99W, hereinafter referred to as "Project." The Project includes the inlay and/or overlay of OR 99W from McDougal Junction to Newberg, and updating handicap ramps throughout the limits of the Project. The location of the Project is approximately as shown on the map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project will be financed at an estimated cost of \$8,068,000 in state funds. The estimate for the total Project cost is subject to change. State shall be responsible for Project costs beyond the estimate.

3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within three (3) calendar years following the date of final execution of this Agreement by both Parties.

## **AGENCY OBLIGATIONS**

1. Agency shall be responsible for the maintenance of those elements of the Project constructed within Agency right of way.
2. Agency, by execution of Agreement, gives its consent as required by ORS 373.050(1) to any and all closure of streets that intersect the state highway, if any there be in connection with or arising out of the Project covered by the Agreement.
3. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers' Compensation coverage unless such employers are exempt under ORS [656.126](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
4. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
5. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within the Agency limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Agreement.
6. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
7. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
8. Agency's Project Manager for this Project is (insert title, address phone number and e-mail address), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **STATE OBLIGATIONS**

1. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the highway Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
2. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
3. State shall be responsible for all costs associated with construction and installation of the Project.
4. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on Agency right of way.
5. State's Project Manager for this Project is Tony Snyder, Area 3 Project Manager, 885 Airport Road SE, Building Y, Salem, Oregon 97301-5857, (503) 986-2881; tony.r.snyder@odot.state.or.us or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written

notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

- c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
  5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
  6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of

expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. If Agency fails to maintain facilities in accordance with the terms of this Agreement, State, at its option, may maintain the facility and bill Agency, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached exhibits constitute 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 and all necessary approvals have been obtained. 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, Key #16127 that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

**CITY OF NEWBERG**, by and through its  
designated officials

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_

**Agency Contact:**

Name/Title  
Address  
Phone  
Email

**State Contact:**

Tony Snyder, Area 3 Project Manager  
885 Airport Road SE, Building B  
Salem, Oregon 97301-  
(503) 986-2692  
Tony.r.snyder@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief  
Engineer

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

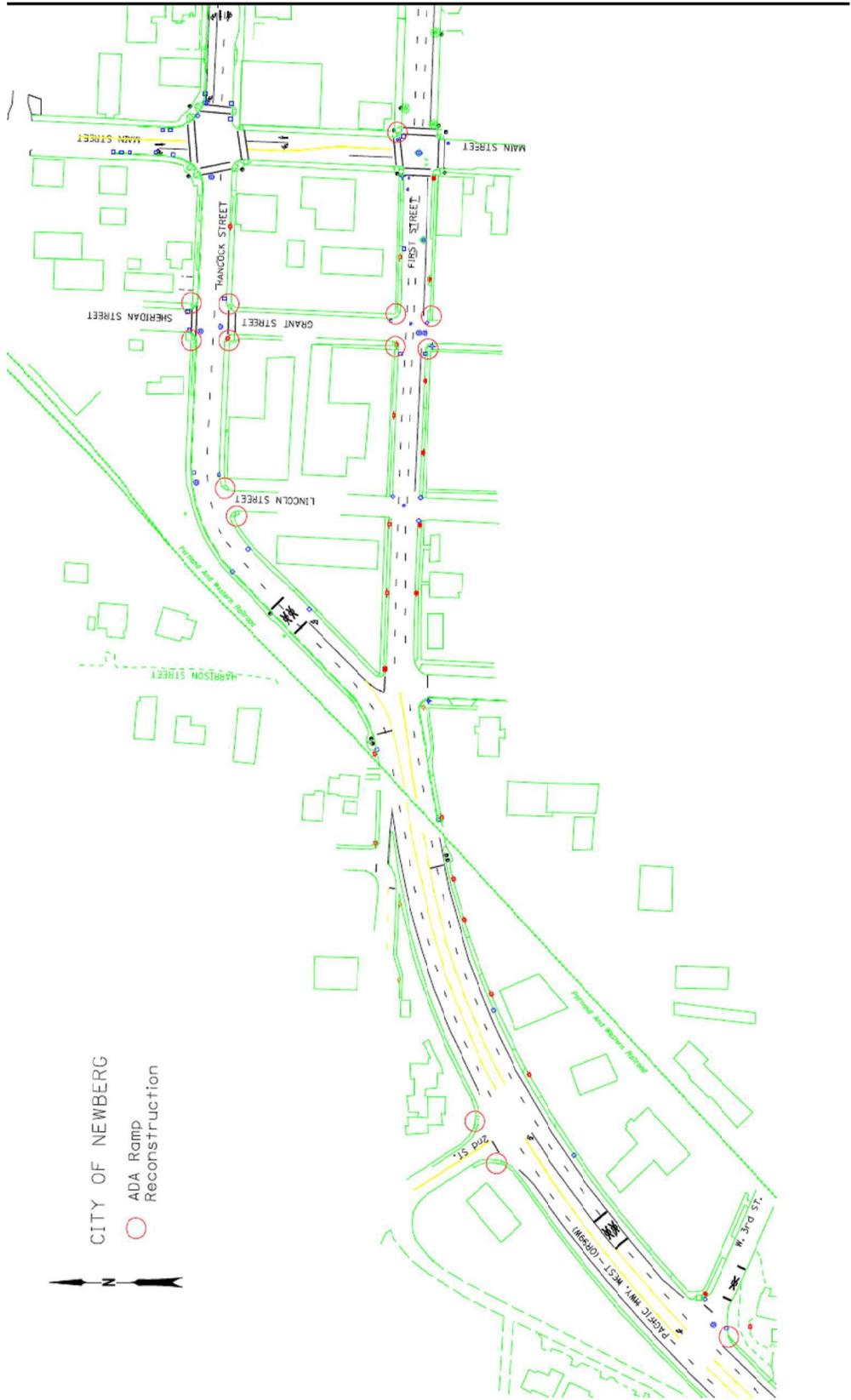
Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**EXHIBIT A – Project Location Map**



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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 19, 2013

Order ___ No.	Ordinance ___ No.	Resolution <u>XX</u> No. 2013-3071	Motion ___	Information ___
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**SUBJECT: Authorizing the city manager to execute an amendment to an intergovernmental agreement with the State of Oregon to exchange federal funds for state funds**

Contact Person (Preparer) for this Motion: Paul Chiu, Senior Engineer/Project Manager  
Dept.: Engineering Services Department  
File No.:

## RECOMMENDATION:

Adopt Resolution No. 2013-3071.

## EXECUTIVE SUMMARY:

The existing Intergovernmental Agreement (IGA) No. 27573 that provides federal funds exchange for state funds to pay for the cost of the Sheridan Street Improvement Project at the Chehalem Cultural Center was executed with the Oregon Department of Transportation (ODOT) on July 28, 2011. This IGA, attached as Attachment "1", exchanged \$269,072.00 federal funds for \$252,927.68 state funds. Amendment No. 1 for this IGA, which pays for various other city street projects, revised the federal funds from \$269,072.00 to \$509,035.00. This increased the state funds to \$478,492.90, allowing greater flexibility for the City in the use of the state funds. This IGA Amendment No. 1, attached as Attachment "2", was executed on October 30, 2012.

The state funds balance is \$81,364.08 in this IGA after the City received a reimbursement earlier this year for \$397,128.82 representing the costs associated with the 2012 Pavement Rehabilitation Project.

ODOT's records indicated that the City has portions of unused federal Surface Transportation Program (STP) allocations from 2009, 2010, 2011, and 2012. The proposed Amendment No. 2 for this IGA will reinstate and consolidate all unused STP allocations from 2009, 2010, 2011, and 2012, and include a portion from the 2013 allocation, exchanging all of them for \$1,072,822.94 state funds. The City's 2013 STP allocation still has \$89,902.00 federal funds remaining after a portion (\$170,200.00) is exchanged in this proposed IGA amendment. The proposed IGA Amendment No. 2, attached as Exhibit "A", will provide \$1,072,822.94 state funds with a new expiration date on October 30, 2014. This federal fund exchange will pay for Vittoria Way pavement preservation, the proposed Sheridan Street improvements, and the Second Street Public Parking Lot Rehabilitation projects.

## FISCAL IMPACT:

This proposed IGA Amendment No. 2 will provide \$1,072,822.94 state funds for Vittoria Way (design and construction \$72,324.00), Sheridan Street (estimated design and construction \$603,484.12), and the Second Street Public Parking Lot Rehabilitation (estimated \$200,000.00) projects. Unused funds can be redirected per City's request to pay for other approved street projects through a future IGA amendment.

## STRATEGIC ASSESSMENT:

Approval of this proposed IGA Amendment No. 2 allows the city to receive reimbursements for the Sheridan Street, Vittoria Way and the parking lot rehabilitation projects. These street projects are implemented in accordance with the City's Transportation System Plan and meet the system needs.

**Oregon Department of Transportation**  
**2011 FUND EXCHANGE AGREEMENT**  
Sheridan Street Improvement Project  
City of Newberg

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and CITY OF NEWBERG, acting by and through its designated officials, hereinafter referred to as "Agency", both herein referred to individually or collectively as Party" or "Parties".

**RECITALS**

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572, and 366.576, State may enter into cooperative agreements with counties, cities, and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of Sheridan Street Improvement project, hereinafter referred to as "Project".
2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds.
3. To assist in funding the Project, Agency has requested State to exchange 2011 federal funds, which have been allocated to Agency, for state funds based on the following ratio:  

\$94 state for \$100 federal
4. Based on this ratio, Agency wishes to trade \$269,072 federal funds for \$252,927.68 state funds.
5. The term of this Agreement will begin upon execution and will terminate two (2) calendar years later, unless extended by an executed amendment.
6. The Parties agree that the exchange is subject to the following conditions:

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27573*

- a. The federal funds transferred to State may be used by State at its discretion.
- b. State funds transferred to Agency must be used for the Project. This Fund Exchange will provide funding for specific roadway projects and may also be used for the following maintenance purposes:
  - i. Purchase of Production of Aggregate. Agency shall ensure the purchase or production of aggregate will be highway related and used exclusively for highway work.
  - ii. Purchase of Equipment. Agency shall clearly describe how it plans to use said equipment on highways. Agency shall demonstrate that the equipment will only be used for highway purposes.
- c. State funds may be used for all phases of the Project, including preliminary engineering, right of way, utility relocations, and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible to account for expenditure of state funds.
- d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$252,927.68. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.
- e. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
- f. Agency and any contractors shall perform the work as an independent contractor and will be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- g. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530, and 279B.270, incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27573*

- laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.
- h. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations, advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
  - i. Agency shall submit invoices to State on a monthly basis for actual costs incurred by Agency on behalf of the Project directly to State's Project manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice or account number (or both), and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$252,927.68, including all expenses. Travel expenses will not be reimbursed.
  - j. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and service demand.
  - k. All employers, including Agency, that employ subject workers in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
  - l. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing, and delivered by certified mail or in person.
    - i. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
      - A. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
      - B. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27573*

notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

- ii. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
    - A. If either Party fails to receive funding, appropriations, limitations, or other expenditure authority sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this Agreement.
    - B. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.
  - iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  - m. State and Agency agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, 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 Agreement did not contain the particular term or provision held to be invalid.
7. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
  8. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
  9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27573*

10. This Agreement and attached exhibits constitute 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 and all necessary approvals have been obtained. 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representative have read this Agreement, understand it, and agrees to be bound by its terms and conditions.

The funding for this Fund Exchange Program was approved by the Oregon Transportation Commission on December 16, 2010 as a part of the 2010-2013 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on April 12, 2011.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

*Signature page to follow*

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27573

On August 2, 2005, the Director, Deputy Director, Highways and Chief Engineer approved Subdelegation Order No. 5, in which the Director, Deputy Director, Highways and Chief Engineer delegate authority to the Region Managers to approve and sign intergovernmental agreements over \$75,000 up to a maximum of \$500,000 when the work is related to a project included in the Statewide Transportation Improvement Program (STIP).

**CITY OF NEWBERG**, by and through its designated officials

By [Signature]  
Mayor

Date 6/20/11

By [Signature]  
City Manager

Date 6/20/11

**APPROVED AS TO LEGAL SUFFICIENCY**

By [Signature]  
City Legal Counsel

Date 6/14/2011

By [Signature]  
Assistant Attorney General

Date 7/18/11

**Agency Contact:**

Tabrina R. McPherson, CIP Administrator  
City of Newberg Public Works Engineering  
414 East First Street  
PO Box 970  
Newberg, OR 97132  
Phone: (503) 554-7705  
Email: [tabrina.mcpherson@newbergoregon.gov](mailto:tabrina.mcpherson@newbergoregon.gov)

**STATE OF OREGON**, by and through its Department of Transportation

By [Signature]  
Region 2 Manager (Acting)

Date 07-28-11

**APPROVAL RECOMMENDED**

By [Signature]  
Region 2 Project Delivery Manager

Date 7/22/2011

By [Signature]  
Region 2 Planning & Development Manager

Date 7/25/11

**State Contact:** Mark Foster  
~~Michael Starnes~~, Local Agency Liaison  
ODOT, Highway Division, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301-5395  
Phone: (503) 986-6920-2650  
Email: [michael.s.starnes@odot.state.or.us](mailto:michael.s.starnes@odot.state.or.us)  
Mark.a.foster

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27573

On August 2, 2005, the Director, Deputy Director, Highways and Chief Engineer approved Subdelegation Order No. 5, in which the Director, Deputy Director, Highways and Chief Engineer delegate authority to the Region Managers to approve and sign intergovernmental agreements over \$75,000 up to a maximum of \$500,000 when the work is related to a project included in the Statewide Transportation Improvement Program (STIP).

**CITY OF NEWBERG**, by and through its designated officials

By [Signature]  
Mayor

Date 6/20/11

By [Signature]  
City Manager

Date 6/20/11

**APPROVED AS TO LEGAL SUFFICIENCY**

By [Signature]  
City Legal Counsel

Date 6/14/2011

By [Signature]  
Assistant Attorney General

Date 7/8/11

**Agency Contact:**

Tabrina R. McPherson, CIP Administrator  
City of Newberg Public Works Engineering  
414 East First Street  
PO Box 970  
Newberg, OR 97132  
Phone: (503) 554-7705  
Email: [tabrina.mcpherson@newbergoregon.gov](mailto:tabrina.mcpherson@newbergoregon.gov)

**STATE OF OREGON**, by and through its Department of Transportation

By [Signature]  
Region 2 Manager (Acting)

Date 07-28-11

**APPROVAL RECOMMENDED**

By [Signature]  
Region 2 Project Delivery Manager

Date 7/29/11

By [Signature]  
Region 2 Planning & Development Manager

Date 7/25/11

**State Contact:** [Signature]  
~~Michael Starnes~~; Local Agency Liaison  
ODOT, Highway Division, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301-5395  
Phone: (503) 986-~~6920~~ 2650  
Email: [michael.starnes@odot.state.or.us](mailto:michael.starnes@odot.state.or.us)  
Mark A. Foster

CHICKERING Sonny P

---

**From:** MCCARTIN Eryca S  
**Sent:** Wednesday, July 20, 2011 9:05 AM  
**To:** CARTWRIGHT Carol A; NELL Lisa D; BRINDLE Frances \*  
Frannie; CHICKERING Sonny P; MCKINLEY Larry \* ODOT;  
PAYNE Vivian B; POTTER James T \* Tim; DORAN Robert P;  
JORDAN Donald L; NEYS David J; WARREN David; BURGESS  
Maryann; HILLS Jon; KERNS Andrea L \* Anne; LINDEKUGEL  
Tyson; LONG Michael T; LYNDE McGregor \* Mac  
**Cc:** MATHER Paul R; WHELAN Suzanne M \* ODOT; ODOT  
Central Authorization Unit  
**Subject:** Action Region 2 Manager July 22-29 2011  
**Attachments:** HWY-03[1].pdf

I will be on vacation starting this Friday July 22 through the 29th, and Sonny has graciously agreed to serve as acting Region 2 Manager. He will be in Salem on other business some of the time, and otherwise in his office in Springfield.

***While I am out of the office from July 22nd through July 29th 2011, I designate Sonny Chickering as acting Region 2 Manager will full delegated authority by rule/statue under Delegation Order HWY 03.***



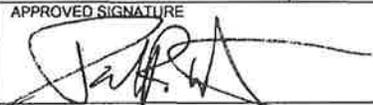
-HWY-03[1].pdf (172  
KB)

***Eryca McCartin, P.E.***  
Interim Region 2 Manager  
Oregon Department of Transportation  
☎ : 503-986-2631

Oregon Department of Transportation



## Delegation Order

SUBJECT  Authority delegated from the Highway Division Administrator to Region Managers	DELEGATION ORDER NO. HWY 03	PAGE NO. 1 of 3
	EFFECTIVE DATE December 1, 2010	SUPERSEDES
	APPROVED SIGNATURE 	

A. The Highway Division Administrator delegates to Region Managers the following authorities for their Regions and authorizes the Region Manager to further delegate these authorities to the appropriate managers within the Region as noted.\* All actions must follow Department policies, standards, and practices.

1. Day-to-day activities for the planning and operation of the Region including:
  - a. Approve travel claims, payroll, and other claims for expenditures within budget limits. [DIR 03, Item A1]
  - b. Administer federal and local regulations and regulations of other state agencies related to Region activities. [DIR 03, Item A1]
  - c. Administer statutes, administrative rules, and other Commission action related to the Region's activities. [DIR 03, Item A1]
  - d. Provide for the rehabilitation, restoration, maintenance and preservation of historic and scenic highways designated by the Commission and post signs necessary to inform motorists of the location and significant features of the highway or structure. Signs posted must be consistent with the standards adopted by the Commission under ORS 810.200. [DIR 03, Item A7]
  - e. Remove and dispose of junk placed on state highway right of way by junkyards as described in ORS 377.635. [DIR 03, Item A28]
  - f. Remove and dispose of personal property from state highway right of way as described in ORS 377.650, OAR Chapter 734, Division 35 and OAR Chapter 734, Division 60. [DIR 03, Item A29]

*The Region Manager may further delegate these authorities to the appropriate managers within the Region. Day-to-day activities do not include authorities retained by the Commission or Director such as adopting administrative rules, approving acquisition of real property, or approving projects which are part of the Statewide Transportation Improvement Program or other modal plan; or authorities specifically delegated such as entering into procurement contracts or interagency or intergovernmental agreements.*

2. In consultation with the ODOT Forester, approve the removal, sale, or disposal of forest products from highway right of way and other real property under ODOT jurisdiction as described in ORS 366.395. *Authority may be delegated to Region Maintenance and Operations Managers and/or District Managers.* [DIR 03, Item A12]

Delegation Order HWY 03  
Page 2 of 4

3. Remove, destroy, sell, or otherwise dispose of logs, poles, pilings left on highway right of way more than 30 days as described in ORS 98.642. *Authority may be delegated to Region Maintenance and Operations Managers and/or District Managers.* [DIR 03, Item A13].
4. Approve agreements with local governments, other state agencies, federal governments, state governments, other countries, and tribes to provide or receive services valued up to \$500,000. Authority includes agreements described in ORS 190.110, 190.420, 366.290, 366.558, 366.290, 366.572, 366.576, 384.115, and 384.405. Agreements to be developed in consultation with the Chief Procurement Officer. *Authority up to \$100,000 may be further delegated.* [DIR 03, Items A4 and A14]
5. Solicit bids and approve contracts for **goods and services of \$100,000 or less** in accordance with the terms of the Procurement Code (ORS 279A, 279B, 279C) and OAR Chapter 125, Division 246. Authority includes signing purchase requests, contract amendments and other documents and approving contract award. *Authority may be further delegated to Region Maintenance and Operations Managers and/or District Managers.* [DIR 03, Items A16 and A17]
6. Approve contracts for **goods and services valued over \$100,000**. Authority includes signing purchase requests, contract amendments, and other documents and approving contract award. Note: Bids or proposals for goods and services contracts must be solicited through Central Services Division. *Authority up to \$1,000,000 may be delegated to Region Maintenance and Operations Managers and/or District Managers.* [DIR 03, Item A17]
7. Approve contracts for **personal services** including architectural, engineering and land surveying and related services (A&E) valued up to \$500,000 and any Small Contracting Program contract. Authority includes signing purchase requests, contract amendments, and other documents and approving the contract award. Note: Bids or proposals for personal service contracts must be solicited through Central Services Division. *Authority may be further delegated.* [DIR 03, Item A17]
8. Approve **public improvement** contracts for the construction of highways, bridges, and other transportation facilities not included in the STIP. Authority includes signing purchase requests, contract amendments, and other documents and approving the contract award. Note: Bids or proposals for public improvement contracts must be solicited through Central Services Division. *Authority up to \$100,000 may be further delegated to Region Maintenance and Operations Managers and/or District Managers.* [DIR 03, Item A17]
9. Take the following actions for **public improvement** contracts for the construction of highways, bridges, and other transportation facilities included in the STIP.

- a. Approve time extension up to 30 days. *Authority up to 30 days may be delegated to Area Managers and up to 14 days to Project Managers.* [DIR 03, Item A17]
- b. Approve minor contract change orders (including work on authorized items) up to \$250,000. *Authority up to \$250,000 may be delegated to Area Managers and up to \$100,000 to Project Managers.* [DIR 03, Item A17] Note: "minor contract change order" is described in the Construction Manual.
- c. Approve major contract change orders (including work on authorized items) up to \$125,000. *Authority up to \$125,000 may be delegated to Area Managers and up to \$50,000 to Project Managers.* [DIR 03, Item A17] Note: "major contract change order" is described in the Construction Manual.
- d. Approve settlement of contractor claims up to \$125,000. *Authority up to \$125,000 may be delegated to Area Managers and up to \$50,000 to Project Managers.* [DIR 03, Item A17]
- e. Approve project overrun of the original construction authorization up to \$500,000. *Authority up to \$250,000 may be delegated to Area Managers.* [DIR 03, Item A18]

B. The Highway Division Administrator delegates the following authorities to Region Managers. These authorities may not be further delegated without the written permission of the Highway Division Administrator.

1. Act as appointing authority for the Region by recruiting, hiring, assigning work, taking disciplinary action, coordinating personnel, and prescribing duties per ORS 240.\*\* [DIR 03, Item A1]
2. Approve cooperative agreements with counties, cities, road districts or other persons for the layout, construction, improvement, repair, and maintenance of state highways described in ORS 366.425. Agreements to be developed in consultation with the Chief Procurement Officer. [DIR 03, Item A15]
3. Approve leases and rental agreements for office space or other facilities developed in consultation with Central Services Division. [DIR 03, Item A20]
4. Authorize the abandonment or negotiated settlement of damage claims, other than claims covered by the Claims Against Others (CAO) process, up to \$100,000. [DIR 03, Item A35]

\* When authority is granted either through a subsequent Delegation Order or by a Letter of Authority, a copy of the document must be filed with the Support Services Branch, Business Services Section.

\*\* When the Region Manager is on vacation or out of the office for an extended period, another manager may be authorized to act as appointing authority provided the name(s)

Delegation Order HWY 03  
Page 4 of 4

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of the managers is provided to the ODOT, Human Resource Manager for filing with the Department of Administrative Services, Human Resources.

Misc. Contracts and Agreements  
No. 27316

**Oregon Department of Transportation**  
**AMENDMENT NUMBER 01**  
**LOCAL AGENCY AGREEMENT**  
**TRANSPORTATION ENHANCEMENT PROGRAM PROJECT**  
OR 219: Vermillion – Aldercrest Sidewalk & Bike Lanes  
City of Newberg

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the **CITY OF NEWBERG**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on June 13, 2011. Said Agreement covers the construction of sections of sidewalks with curb/gutter and planter strip on the west side, and continuous bike lanes on both sides of Oregon Route 219.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funding and update language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**TERMS OF AGREEMENT, Paragraph 2, Pages 1 and 2, which reads:**

2. The Project will be conducted as a part of the Transportation Enhancement Program under Title 23, United States Code, which incorporated SAFETEA-LU. The total Project cost is estimated at \$693,000, which is subject to change. The Enhancement Funds are estimated at \$600,000 with Agency providing the required match for the Enhancement Funds, plus an additional \$24,000, and any non-participating costs, including all costs in excess of the available federal funds. Of Agency's additional \$24,000 contribution, up to a maximum of \$16,000 may go towards costs incurred by Agency for Agency's constructing the portion of the Project consisting of the sidewalk connection across the railroad tracks between Vermillion and Illinois Street. The Enhancement Funds will be used for all phases of the Project.
  - a. Agency must obtain approval from State's Transportation Enhancement Program Manager for any additional funds beyond the amount in Paragraph number 2 above. For additional Enhancement Funds up to a total of \$660,000 (10 percent over the \$600,000 estimated Enhancement funding) Agency's matching share will be 10.27 percent of Enhancement eligible costs. For any approved Enhancement Funds above \$660,000 Agency's matching share will be fifty (50) percent of the Enhancement eligible costs.
  - b. Agency is not guaranteed the use of unspent funds for a particular phase of work. State will not release funds from any authorized phase of work for use on a subsequent phase unless specifically requested by Agency before obligating funds on the subsequent phase.

Key No. 17382

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316, Amendment No. 1*

**Shall be deleted in its entirety and replaced with the following:**

2. The Project will be conducted as a part of the Transportation Enhancement Program under Title 23, United States Code, which incorporated SAFETEA-LU. The total Project cost is estimated at \$908,000, which is subject to change. The Enhancement Funds are estimated at \$800,000, with Agency providing the required match for the Enhancement Funds, plus an additional \$16,000 and any non-participating costs, including all costs in excess of the available federal funds. Of Agency's additional contribution, up to a maximum of \$16,000 may go towards costs incurred by Agency for Agency's constructing the portion of the Project consisting of the sidewalk connection across the railroad tracks between Vermillion and Illinois Street, as governed by the terms of State's Walkway/Bikeway Project Agreement Number 26900. The Enhancement Funds will be used for all phases of the Project.
  - a. Agency must obtain approval from State's Transportation Enhancement Program Manager for any additional funds beyond the amount in Paragraph number 2 above. For additional Enhancement Funds up to a total of \$880,000, Agency's matching share will be 10.27 percent of Enhancement-eligible costs. For any approved Enhancement Funds above \$880,000 (10 percent over the \$800,000 estimated enhanced funding), Agency's matching share will be fifty (50) percent of the Enhancement-eligible costs.
  - b. Agency is not guaranteed the use of unspent funds for a particular phase of work. State will not release funds from any authorized phase of work for use on a subsequent phase unless specifically requested by Agency before obligating funds on the subsequent phase.

**Insert new Attachment No. 1, Special Provisions, Paragraph 9, to read as follows:**

9. Workers' Compensation language in the Standards Provisions, Paragraph 49, shall be replaced with the following language:
  - a. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316, Amendment No. 1*

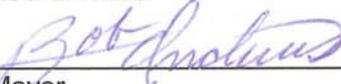
**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2010-2013 Statewide Transportation Improvement Program, (Key No. 17382) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

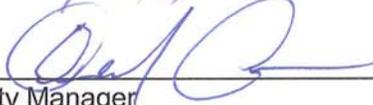
*Signature page to follow*

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316, Amendment No. 1

**CITY OF NEWBERG**, by and through its  
elected officials

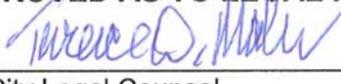
By   
Mayor

Date 7/26/11

By   
City Manager

Date 7/26/11

**APPROVED AS TO LEGAL FORM**

By   
City Legal Counsel

Date 7/25/2011

**Agency Contact:**

Paul Chiu, P.E.  
Senior Engineer/Project Manager  
City of Newberg  
414 East First Street  
PO Box 970  
Newberg, OR 97132  
Phone: (503) 554-1751  
Email: [paul.chiu@newbergoregon.gov](mailto:paul.chiu@newbergoregon.gov)

**State Contact:**

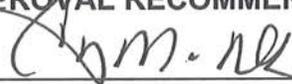
Mark Foster, Local Agency Liaison  
ODOT, Highway Division, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301-5395  
Phone: (503) 986-2650  
Email: [mark.a.foster@odot.state.or.us](mailto:mark.a.foster@odot.state.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

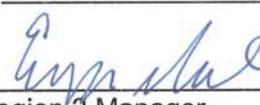
By   
Highway Division Administrator

Date 8/22/11

**APPROVAL RECOMMENDED**

By   
Technical Services Manager/Chief Engineer

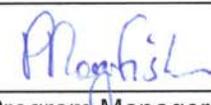
Date 8-16-11

By   
Region 2 Manager

Date 8/11/11

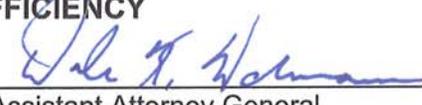
By   
Region 2 Project Delivery Manager

Date 8-10-11

By   
TE Program Manager or Local Government  
Section Manager

Date 15-Aug-11

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By   
Assistant Attorney General

Date 8/13/11



## RESOLUTION No. 2013-3071

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**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON TO EXCHANGE FEDERAL FUNDS FOR STATE FUNDS**

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### RECITALS:

1. On July 28, 2011, the City of Newberg executed Intergovernmental Agreement (IGA) No. 27573 with the Oregon Department of Transportation (ODOT) exchanging \$269,072.00 federal funds for \$252,927.68 state funds for Sheridan Street improvements. On October 30, 2012, the City executed IGA Amendment No. 1 with ODOT, which increased trading \$509,035.00 federal funds for \$478,492.90 state funds to pay for various City street overlay projects.
2. ODOT will reinstate and consolidate all unused federal Surface Transportation Program (STP) allocations from 2009, 2010, 2011, and 2012 and include a portion of the 2013 STP allocation in this proposed IGA Amendment No. 2. The city's 2013 STP allocation will have \$89,902.00 federal funds remaining after a portion (\$170,200.00) is exchanged in this proposed IGA amendment.
3. The proposed IGA Amendment No. 2, attached as Exhibit "A", provides a total of \$1,072,822.94 state funds that will reimburse for Vittoria Way, Sheridan Street, and the Second Street Public Parking Lot Rehabilitation projects. This amendment will expire on October 30, 2014.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The Newberg City Council does hereby authorize the city manager to execute Intergovernmental Agreement No. 27573 Amendment No. 2 with Oregon Department of Transportation (ODOT) reinstating, consolidating, and providing \$1,072,822.94 state funds for the city, attached as Exhibit "A", which hereby adopted and by this reference incorporated.

- **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: August 20, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 19<sup>th</sup> day of August, 2013.

---

Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 22<sup>nd</sup> day of August, 2013.

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Bob Andrews, Mayor

**AMENDMENT NUMBER 02  
FUND EXCHANGE AGREEMENT**

Various City Street Projects  
City of Newberg

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the **CITY OF NEWBERG**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on July 28, 2011, and Amendment Number 1 on October 30, 2012. Said Agreement covers the exchange of Agency's allocated federal Surface Transportation Program (STP) funds for State funds to be used on various city street projects by Agency.

It has now been determined by State and Agency that the Agreement referenced above shall be reinstated and amended to combine Agency's federal STP allocations or portions thereof from 2009, 2010, 2011, 2012, and 2013 and exchange them for State funds. The State funds will be used by Agency for various city street projects. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**TERMS OF AGREEMENT, Paragraph Nos. 1 and 3 through 5, Page 1, which reads:**

1. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of the Sheridan Street Improvement project, and for all phases of Various City Street Overlay projects, hereinafter referred to as "Project."
3. To assist in funding the Project, Agency has requested State to exchange 2011 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

\$94 state for \$100 federal

4. Based on this ratio, Agency wishes to trade \$509,035 federal funds for \$478,492.90 state funds.
5. The term of this Agreement will begin upon execution and will terminate two (2) calendar years later, unless extended by an executed amendment.

**Shall be deleted in its entirety and replaced with the following:**

1. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of the Vittoria Way Pavement Preservation and Sheridan Street Improvements projects, hereinafter referred to as "Project."
3. To assist in funding the Project, Agency has requested State to exchange federal funds in the following manner:

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27573, Amendment No. 2

<b>Fiscal Year</b>	<b>Federal Funds</b>	<b>Exchange Rate</b>	<b>State Funds</b>
2009	\$224,760	94%	\$211,274.40
2010	\$237,306	94%	\$223,067.64
2011	\$269,072	94%	\$252,927.68
2012	\$239,963	94%	\$225,565.22
2013	\$170,200	94%	\$159,988.00
<b>TOTAL</b>	<b>\$1,141,301</b>		<b>\$1,072,822.94</b>

4. Agency shall exchange a total of \$1,141,301 federal funds for state funds at the ratios defined in the above table. State shall reimburse Agency up to the total of \$1,072,822.94 state funds for eligible costs incurred.
5. The term of this Agreement will begin upon execution and will terminate on October 30, 2014, unless extended by an executed amendment.

**TERMS OF AGREEMENT, Paragraph No. 6d, Page 2, which reads:**

6d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$478,492.90. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.

**Shall be deleted in its entirety and replaced with the following:**

6d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$1,072,822.94. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.

**TERMS OF AGREEMENT, Paragraph No. 6i, Page 3, which reads:**

6i. Agency shall submit invoices to State on a monthly basis for actual costs incurred by Agency on behalf of the Project directly to State's Project manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice or account number (or both), and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$478,492.90, including all expenses. Travel expenses will not be reimbursed.

**Shall be deleted in its entirety and replaced with the following:**

6i. Agency shall submit invoices to State on a monthly basis for actual costs incurred by Agency on behalf of the Project directly to State's Project manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27573, Amendment No. 2

number, the invoice or account number (or both), and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$1,072,822.94, including all expenses. Travel expenses will not be reimbursed.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The funding for this Fund Exchange Program was approved by the Oregon Transportation Commission on March 21, 2012 as a part of the 2012-2015 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on July 30, 2013.

SIGNATURE PAGE FOLLOWS

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27573, Amendment No. 2

**CITY OF NEWBERG**, by and through its  
elected officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL FORM**

By \_\_\_\_\_  
City Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

Paul Chiu, P.E., Senior Engineer  
City of Newberg Engineering Services Dept.  
414 East First Street  
PO Box 970  
Newberg, OR 97132  
Phone: (503) 554-1751  
Email: [paul.chiu@newbergoregon.gov](mailto:paul.chiu@newbergoregon.gov)

**State Contact:**

Brian Nicholas, Local Agency Liaison  
ODOT, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301  
Phone: (503) 986-2650  
Email: [brian.nicholas@odot.state.or.us](mailto:brian.nicholas@odot.state.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Planning and Development  
Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 19, 2013

Order \_\_\_      Ordinance \_\_\_      Resolution XX      Motion \_\_\_      Information \_\_\_  
No.              No.              No. 2013-3072

**SUBJECT: Authorizing the city manager to execute an amendment to an intergovernmental agreement with the State of Oregon to provide sidewalk and bike lane improvements to N. College Street (Highway 219).**

Contact Person (Preparer) for this Motion: Paul Chiu, Senior Engineer/Project Manager  
Dept.: Engineering Services Department  
File No.:

## RECOMMENDATION:

Adopt Resolution No. 2013-3072.

## EXECUTIVE SUMMARY:

The existing Intergovernmental Agreement (IGA) No. 27316 for the improvements of College Street sidewalks and bike lanes to be performed by the Oregon Department of Transportation (ODOT) was executed on June 13, 2011. This IGA is attached as Attachment "1". Amendment No. 1 to this IGA, attached as Attachment "2", was executed on August 22, 2011.

Due to the federal and state environmental determination that stormwater detention and treatment was required for the project to meet the joint permit application (JPA) requirements, additional time and effort was consumed for the additional design and acquisition for additional rights of way.

The original obligation date in the IGA (for construction bid solicitation) was September 30, 2013. The proposed IGA Amendment No. 2 provides an extension of time for the project's plans, specifications, and estimates (PS&E) package and allows the project to be obligated on or before June 30, 2014. This proposed amendment to the IGA is attached as Exhibit "A". Construction of this project is still planned for summer of 2014.

## FISCAL IMPACT:

This proposed IGA Amendment No. 2 provides only the time extension for the obligation of the project. Once the construction budget is finalized, the project limits will be affirmed or modified, and/or the funding commitments from ODOT and the City will be adjusted.

## STRATEGIC ASSESSMENT:

Approval of this proposed IGA Amendment No. 2 allows the project to continue through the bid and construction phases in 2014 construction season. This project provides an essential pedestrian and bicyclist connection along a major arterial route in accordance with the City's Transportation System Plan and the Newberg ADA/Pedestrian/Bike Route Improvement Plan.

Misc. Contracts and Agreements  
No. 27316

**Oregon Department of Transportation  
LOCAL AGENCY AGREEMENT  
TRANSPORTATION ENHANCEMENT PROGRAM PROJECT  
OR219: Vermillion-Aldercrest Sidewalk & Bike Lanes  
City of Newberg**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the CITY OF NEWBERG, acting by and through its elected officials, hereinafter referred to as "Agency", both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. Oregon Route (OR) 219 (Hillsboro-Silverton Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Vermillion Street and Aldercrest Drive are part of the city street system under the jurisdiction and control of Agency.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects, with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. Under provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, (SAFETEA-LU) State is required to set aside federal funds for projects to address transportation enhancement activities, hereinafter referred to as Enhancement Funds.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under said provisions, State and Agency agree to construct sections of sidewalk with curb/gutter and planter strip on the west side, and continuous bike lanes on both sides of OR 219, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The Project will be conducted as a part of the Transportation Enhancement Program under Title 23, United States Code, which incorporated SAFETEA-LU. The total Project cost is estimated at \$693,000, which is subject to change. The Enhancement Funds are estimated at \$600,000 with Agency providing the required match for the

Key No. 17382

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316*

Enhancement Funds, plus an additional \$24,000, and any non-participating costs, including all costs in excess of the available federal funds. Of Agency's additional \$24,000 contribution, up to a maximum of \$16,000 may go towards costs incurred by Agency for Agency's constructing the portion of the Project consisting of the sidewalk connection across the railroad tracks between Vermillion Street and Illinois Street. The Enhancement Funds will be used for all phases of the Project.

- a. Agency must obtain approval from State's Transportation Enhancement Program Manager for any additional funds beyond the amount in Paragraph number 2 above. For additional Enhancement Funds up to a total of \$660,000 (10 percent over the \$600,000 estimated Enhancement funding) Agency's matching share will be 10.27 percent of Enhancement eligible costs. For any approved Enhancement Funds above \$660,000 Agency's matching share will be fifty (50) percent of the Enhancement eligible costs.
  - b. Agency is not guaranteed the use of unspent funds for a particular phase of work. State will not release funds from any authorized phase of work for use on a subsequent phase unless specifically requested by Agency before obligating funds on the subsequent phase.
3. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
  4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
  5. The term of this Agreement will begin on the date all required signatures are obtained and will terminate on completion of the Project and final payment or ten (10) calendar years following the date all required signatures are obtained, whichever is sooner. The attached Special Provisions may contain additional termination conditions.
  6. This Agreement may be terminated by mutual written consent of both Parties.
  7. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
    - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
    - b. If Agency fails to perform any of the other provisions of this Agreement, or

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316*

- so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
- c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
8. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
  9. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2.
  10. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount will be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
  11. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
  12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each

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copy of this Agreement so executed will constitute an original.

13. This Agreement and attached exhibits constitute 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 will bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement will not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2010-2013 Statewide Transportation Improvement Program (Key No. 17382) that was approved by the Oregon Transportation Commission on December 16, 2010, or will subsequently be approved by amendment to the STIP.

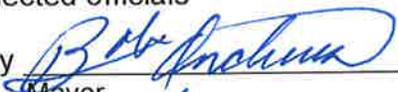
The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

*Signature page to follow*

City of Newberg / State of Oregon – Dept. of Transportation  
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On September 15, 2006, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, Paragraph 1, in which authority is delegated to the Highway Division Administrator, to approve and sign agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

**CITY OF NEWBERG**, by and through its  
elected officials

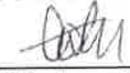
By   
Mayor

Date 6/12/11

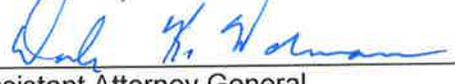
By   
City Manager

Date 5/12/11

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By   
City Legal Counsel

Date 5/9/2011

By   
Assistant Attorney General

Date 5/24/11

**Agency Contact:**

Paul Chiu, PE  
Senior Engineer/Project Manager  
City of Newberg  
414 East First Street  
PO Box 970  
Newberg, OR 97132  
Phone: (503) 554-1751  
Email: [paul.chiu@newbergoregon.gov](mailto:paul.chiu@newbergoregon.gov)

**STATE OF OREGON**, by and through  
its Department of Transportation

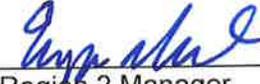
By   
Highway Division Administrator

Date 6/13/11

**APPROVAL RECOMMENDED**

By   
Technical Services Manager/Chief  
Engineer

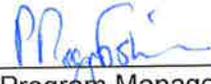
Date 6-8-11

By   
Region 2 Manager

Date 6/3/2011

By   
Region 2 Project Delivery Manager

Date 6-1-11

By   
TE Program Manager or Local Gov't.  
Section Manager

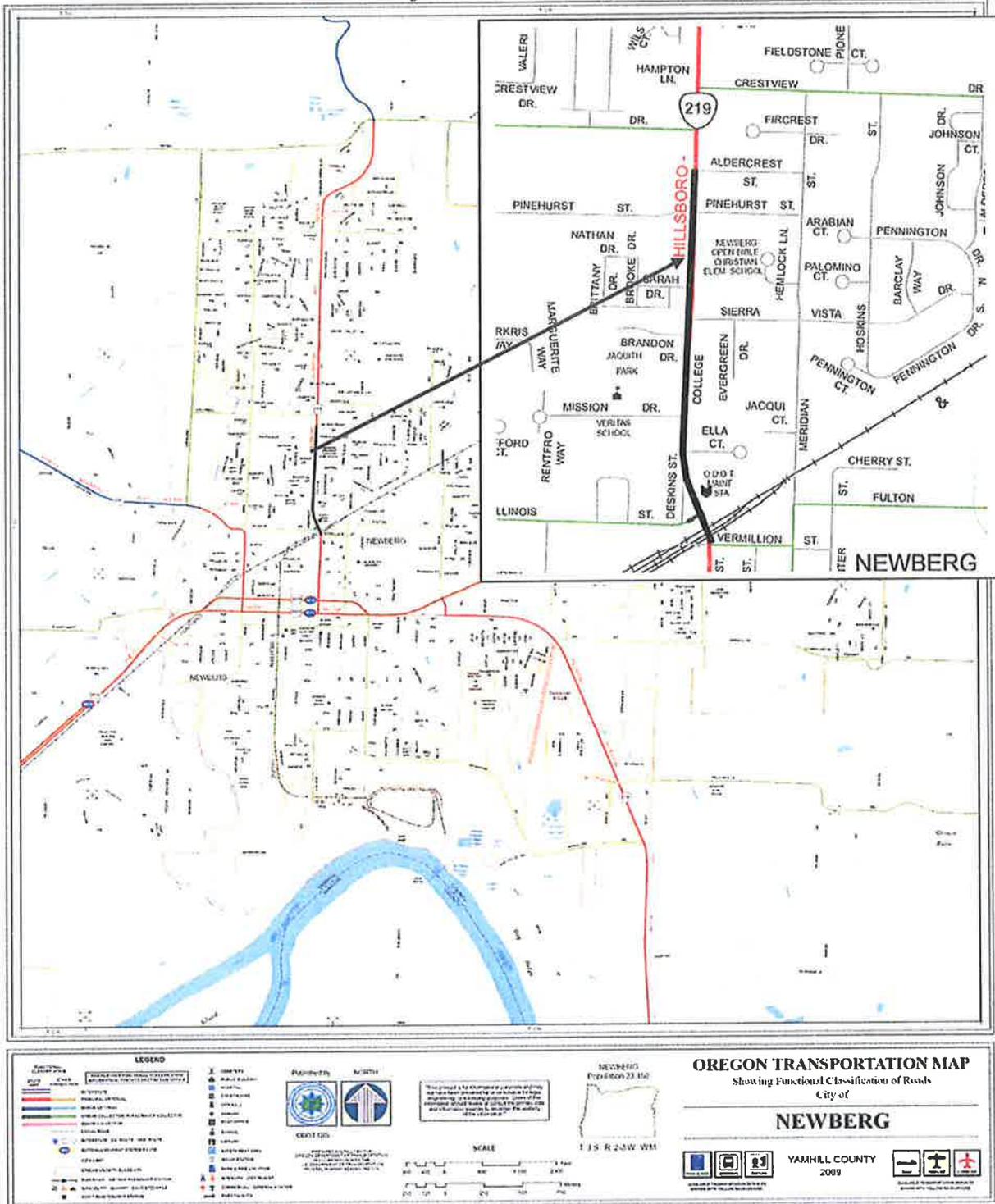
Date 6-June-2011

**State Contact:**

Mark Foster, Local Agency Liaison  
ODOT, Highway Division, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301-5395  
Phone: (503) 986-2650  
Email: [mark.a.foster@odot.state.or.us](mailto:mark.a.foster@odot.state.or.us)

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316

**EXHIBIT A**  
**Project Location Map**



*City of Newberg / State of Oregon – Dept. of Transportation  
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## **ATTACHMENT NO. 1**

### **SPECIAL PROVISIONS**

1. The Parties agree that the target delivery date for the Project's "Plans, Specifications, and Estimates" (PS&E) package is August 2012. State may withdraw all Transportation Enhancement Funds that are not obligated on or before September 30, 2013, which is twelve (12) months after the target obligation date assigned by State. In that event, State may reassign any Transportation Enhancement Funds not yet obligated for the Project and will have no obligation to fund any remaining phases of work through the Transportation Enhancement Program.
2. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments. Project plans will conform to the Oregon Highway Design Manual and the Oregon Bicycle and Pedestrian Plan.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, Agency shall provide State its share of the Project cost upon receipt of request from State. The Project cost is defined as the Engineer's estimate plus ten (10) percent.
4. State may make available Region 2's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, they agree to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
5. Indemnification language in the Standards Provisions, Paragraphs 46 and 47, shall be replaced with the following language:
  - a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
  - b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316*

- expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
- c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
- d. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
6. Agency shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation and service demand. Said maintenance responsibilities include maintenance and operation of all curbs, sidewalks, and planter strips constructed within the Project. State shall maintain and operate bike lanes within state highway right of way. State and Agency agree that the useful life of this Project is defined as twenty (20) years. State may conduct periodic inspections during the life of the Project to verify that Project is being properly maintained and continues to serve the purpose for which federal funds were provided.
7. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any Transportation Enhancement Funds until State receives full reimbursement of the costs incurred.

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Agreement No. 27316*

8. Maintenance responsibilities will survive any termination of this Agreement. However, Agency shall not bear the said maintenance responsibilities should funding be cancelled by the State, not because of Agency's action or inaction.

*City of Newberg / State of Oregon – Dept. of Transportation  
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**ATTACHMENT NO. 2  
FEDERAL STANDARD PROVISIONS  
JOINT OBLIGATIONS**

**PROJECT ADMINISTRATION**

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

**PRELIMINARY & CONSTRUCTION ENGINEERING**

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316*

**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF  
TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133 and NO. A-133 Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

**STATE OBLIGATIONS**

**PROJECT FUNDING REQUEST**

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program

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Agreement No. 27316*

shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

**FINANCE**

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

**PROJECT ACTIVITIES**

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316*

### **RIGHT OF WAY**

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

### **AGENCY OBLIGATIONS**

#### **FINANCE**

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
  - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316*

from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

- b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
  - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
  - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316*

program.

30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710, Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
  - a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
  - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
  - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316*

#### **RAILROADS**

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

#### **UTILITIES**

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

#### **STANDARDS**

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Plan", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316*

42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

#### **GRADE CHANGE LIABILITY**

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

#### **CONTRACTOR CLAIMS**

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

#### **MAINTENANCE RESPONSIBILITIES**

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

#### **WORKERS' COMPENSATION COVERAGE**

49. All employers, including Agency that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Agency shall ensure that each of its contractors complies with these requirements.

#### **LOBBYING RESTRICTIONS**

50. Agency certifies by signing the Agreement that:

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316*

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.

Misc. Contracts and Agreements  
No. 27316

**Oregon Department of Transportation**  
**AMENDMENT NUMBER 01**  
**LOCAL AGENCY AGREEMENT**  
**TRANSPORTATION ENHANCEMENT PROGRAM PROJECT**  
OR 219: Vermillion – Aldercrest Sidewalk & Bike Lanes  
City of Newberg

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the **CITY OF NEWBERG**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on June 13, 2011. Said Agreement covers the construction of sections of sidewalks with curb/gutter and planter strip on the west side, and continuous bike lanes on both sides of Oregon Route 219.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funding and update language. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**TERMS OF AGREEMENT, Paragraph 2, Pages 1 and 2, which reads:**

2. The Project will be conducted as a part of the Transportation Enhancement Program under Title 23, United States Code, which incorporated SAFETEA-LU. The total Project cost is estimated at \$693,000, which is subject to change. The Enhancement Funds are estimated at \$600,000 with Agency providing the required match for the Enhancement Funds, plus an additional \$24,000, and any non-participating costs, including all costs in excess of the available federal funds. Of Agency's additional \$24,000 contribution, up to a maximum of \$16,000 may go towards costs incurred by Agency for Agency's constructing the portion of the Project consisting of the sidewalk connection across the railroad tracks between Vermillion and Illinois Street. The Enhancement Funds will be used for all phases of the Project.
  - a. Agency must obtain approval from State's Transportation Enhancement Program Manager for any additional funds beyond the amount in Paragraph number 2 above. For additional Enhancement Funds up to a total of \$660,000 (10 percent over the \$600,000 estimated Enhancement funding) Agency's matching share will be 10.27 percent of Enhancement eligible costs. For any approved Enhancement Funds above \$660,000 Agency's matching share will be fifty (50) percent of the Enhancement eligible costs.
  - b. Agency is not guaranteed the use of unspent funds for a particular phase of work. State will not release funds from any authorized phase of work for use on a subsequent phase unless specifically requested by Agency before obligating funds on the subsequent phase.

Key No. 17382

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316, Amendment No. 1*

**Shall be deleted in its entirety and replaced with the following:**

2. The Project will be conducted as a part of the Transportation Enhancement Program under Title 23, United States Code, which incorporated SAFETEA-LU. The total Project cost is estimated at \$908,000, which is subject to change. The Enhancement Funds are estimated at \$800,000, with Agency providing the required match for the Enhancement Funds, plus an additional \$16,000 and any non-participating costs, including all costs in excess of the available federal funds. Of Agency's additional contribution, up to a maximum of \$16,000 may go towards costs incurred by Agency for Agency's constructing the portion of the Project consisting of the sidewalk connection across the railroad tracks between Vermillion and Illinois Street, as governed by the terms of State's Walkway/Bikeway Project Agreement Number 26900. The Enhancement Funds will be used for all phases of the Project.
  - a. Agency must obtain approval from State's Transportation Enhancement Program Manager for any additional funds beyond the amount in Paragraph number 2 above. For additional Enhancement Funds up to a total of \$880,000, Agency's matching share will be 10.27 percent of Enhancement-eligible costs. For any approved Enhancement Funds above \$880,000 (10 percent over the \$800,000 estimated enhanced funding), Agency's matching share will be fifty (50) percent of the Enhancement-eligible costs.
  - b. Agency is not guaranteed the use of unspent funds for a particular phase of work. State will not release funds from any authorized phase of work for use on a subsequent phase unless specifically requested by Agency before obligating funds on the subsequent phase.

**Insert new Attachment No. 1, Special Provisions, Paragraph 9, to read as follows:**

9. Workers' Compensation language in the Standards Provisions, Paragraph 49, shall be replaced with the following language:
  - a. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

*City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316, Amendment No. 1*

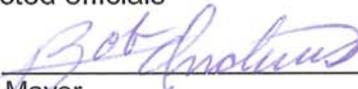
**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2010-2013 Statewide Transportation Improvement Program, (Key No. 17382) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

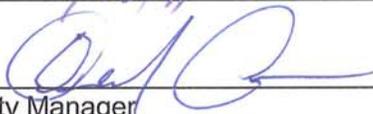
*Signature page to follow*

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316, Amendment No. 1

**CITY OF NEWBERG**, by and through its  
elected officials

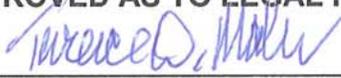
By   
Mayor

Date 7/26/11

By   
City Manager

Date 7/26/11

**APPROVED AS TO LEGAL FORM**

By   
City Legal Counsel

Date 7/25/2011

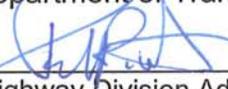
**Agency Contact:**

Paul Chiu, P.E.  
Senior Engineer/Project Manager  
City of Newberg  
414 East First Street  
PO Box 970  
Newberg, OR 97132  
Phone: (503) 554-1751  
Email: [paul.chiu@newbergoregon.gov](mailto:paul.chiu@newbergoregon.gov)

**State Contact:**

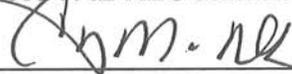
Mark Foster, Local Agency Liaison  
ODOT, Highway Division, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301-5395  
Phone: (503) 986-2650  
Email: [mark.a.foster@odot.state.or.us](mailto:mark.a.foster@odot.state.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

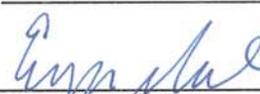
By   
Highway Division Administrator

Date 8/22/11

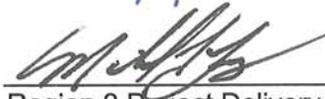
**APPROVAL RECOMMENDED**

By   
Technical Services Manager/Chief Engineer

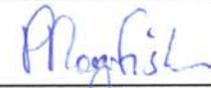
Date 8-16-11

By   
Region 2 Manager

Date 8/11/11

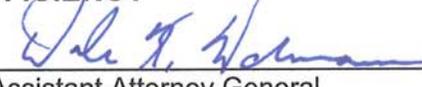
By   
Region 2 Project Delivery Manager

Date 8-10-11

By   
TE Program Manager or Local Government  
Section Manager

Date 15-Aug-11

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By   
Assistant Attorney General

Date 8/13/11



## RESOLUTION No. 2013-3072

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**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF OREGON TO PROVIDE SIDEWALK AND BIKE LANE IMPROVEMENTS TO N. COLLEGE STREET (HIGHWAY 219)**

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### RECITALS:

1. On June 13, 2011, the City of Newberg executed Intergovernmental Agreement (IGA) No. 27316 with the Oregon Department of Transportation (ODOT) providing a \$600,000.00 grant for the proposed N. College Street Sidewalks and Bike Lanes Improvement Project. On August 22, 2011, the City executed Amendment No. 1 for this IGA with ODOT providing an additional \$200,000.00 for the proposed project.
2. Due to the federal and state environmental determination that stormwater detention and treatment was required for the project to meet the joint permit application requirements, additional time and effort was consumed for the additional design and acquisition for additional rights-of-way.
3. The original obligation date in IGA No. 27316 (for construction bid solicitation) was September 30, 2013. The proposed IGA Amendment No. 2 extends this obligation date to June 30, 2014.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The Newberg City Council does hereby authorize the city manager to execute Intergovernmental Agreement No. 27316 Amendment No. 2 with Oregon Department of Transportation extending the obligation date to June 30, 2014 for the N. College Street Sidewalks and Bike Lanes Improvement Project, attached as Exhibit "A", which hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: August 20, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 19<sup>th</sup> day of August, 2013.

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Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 22<sup>nd</sup> day of August, 2013.

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Bob Andrews, Mayor

**AMENDMENT NUMBER 02**  
**LOCAL AGENCY AGREEMENT**  
**TRANSPORTATION ENHANCEMENT PROGRAM PROJECT**  
OR 219: Vermillion-Aldercrest Sidewalk & Bike Lanes  
City of Newberg

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the **CITY OF NEWBERG**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on June 13, 2011, and Amendment No. 1 on August 22, 2011. Said Agreement covers the construction of sections of sidewalks with curb/gutter and planter strip on the west side, and continuous bike lanes on both sides of Oregon Route 219.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the obligation date for the Transportation Enhancement funds associated with this Project. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**ATTACHMENT NO. 1 – SPECIAL PROVISIONS, Paragraph 1, Page 7, which reads:**

1. The Parties agree that the target delivery date for the Project's "Plans, Specifications and Estimates" (PS&E) package is August 2012. State may withdraw all Transportation Enhancement Funds that are not obligated on or before September 30, 2013, which is twelve (12) months after the target obligation date assigned by State. In that event, State may reassign any Transportation Enhancement Funds not yet obligated for the Project and will have no obligation to fund any remaining phases of work through the Transportation Enhancement Program.

**Shall be deleted in its entirety and replaced with the following:**

1. The Parties agree that the target delivery date for the Project's "Plans, Specifications, and Estimates" (PS&E) package is March 2014. State may withdraw all Transportation Enhancement Funds that are not obligated on or before June 30, 2014. In that event, State may reassign any Transportation Enhancement Funds not yet obligated for the Project and will have no obligation to fund any remaining phases of work through the Transportation Enhancement Program.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

City of Newberg / State of Oregon – Dept. of Transportation  
Agreement No. 27316, Amendment No. 2

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key No. 17382) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

**CITY OF NEWBERG**, by and through its  
elected officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL FORM**

By \_\_\_\_\_  
City Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

Paul Chiu, P.E., Senior Engineer  
City of Newberg Engineering Services Dept.  
414 East First Street  
PO Box 970  
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**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief  
Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Transportation Program Manager or  
Active Transportation Section Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 19, 2013

Order ___ No.	Ordinance ___ No.	Resolution <u>XX</u> No. 2013-3073	Motion ___	Information ___
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**SUBJECT: Initiate an amendment to the Transportation System Plan for the reflect the Phase 1 alignment of the Newberg-Dundee Bypass**

Contact Person (Preparer) for this Motion: Barton Brierley, AICP  
Dept.: Planning and Building  
File No.:CPTA4-13-001

## RECOMMENDATION:

Adopt Resolution No. 2013-3073 initiating an amendment to the Newberg Transportation System Plan to reflect the Phase 1 alignment of the Newberg-Dundee Bypass.

## EXECUTIVE SUMMARY:

The Newberg Transportation System Plan includes the approved alignment for the Newberg-Dundee Bypass. Phase 1 of the Bypass is being constructed. Because Phase 1 includes only part of the Bypass, certain modifications to the alignment are needed in the interim, particularly in the Wilsonville Road/Highway 219 area. The Oregon Department of Transportation (ODOT) has applied for an amendment to the Newberg Transportation System Plan to insure the Phase 1 alignment is consistent with Newberg's Plan.

The Newberg Municipal Code requires changes to the comprehensive plan be initiated by resolution of the City Council. ODOT is asking the city initiate the plan amendment. The attached resolution initiates the process. If the Council initiates the amendment, staff will schedule the item for a hearing at the Planning Commission and then the City Council.

## FISCAL IMPACT:

ODOT has paid the fee to cover the cost of processing the amendment.

## STRATEGIC ASSESSMENT:

Getting the Newberg-Dundee Bypass constructed has long been a goal of the city. Initiating the plan amendment will help move this process forward to the next step.



## RESOLUTION No. 2013-3073

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**A RESOLUTION INITIATING AN AMENDMENT TO THE NEWBERG  
TRANSPORTATION SYSTEM PLAN TO REFLECT THE NEWBERG-  
DUNDEE BYPASS PHASE I ALIGNMENT**

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### RECITALS:

1. The Oregon Department of Transportation has requested the city amend its transportation system plan to reflect the planned alignment of Phase 1 of the Newberg-Dundee Bypass.
2. Newberg Development Code 15.302.030(B) requires the city council to initiate changes to the comprehensive plan.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council hereby initiates an amendment to the Newberg Transportation System Plan to reflect the planned alignment of Phase 1 of the Newberg-Dundee Bypass as attached in Exhibit "A", which is hereby adopted and by this reference incorporated.
2. By initiating this amendment, the council does not commit to taking any specific action on the proposal; it only wishes to give the amendment full consideration in a public hearing.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: August 20, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 19<sup>th</sup> day of August, 2013.

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Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 22<sup>nd</sup> day of August, 2013.

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Bob Andrews, Mayor

## **Newberg Dundee Bypass Transportation System Type IV Application (Legislative Amendments)**

The following document includes the criteria response for the amendment, proposed text language to update the Newberg Transportation System Plan (TSP), and a proposed map amendment.

### **Background**

This plan amendment application is before the Newberg Planning Commission and the Newberg City Council to authorize the realignment of Wilsonville Road as part of Phase 1 of the Newberg Dundee Bypass Project (Bypass). In 2004 and again in 2011, the Yamhill Board of Commissioners adopted plan amendments, including statewide planning goal exceptions, initially establishing the Bypass corridor and interchange locations and then modifying their footprint, in part, and authorizing changes to local access and circulation. As approved, the Bypass corridor extends eastward from Oregon 18 near Dayton to Oregon 99W east of Newberg, with interchanges at Dayton, East Dundee, Oregon 219 and East Newberg. The City of Newberg updated its TSP and Comprehensive Plan in 2005 and 2011 to include the full Bypass alignment and Interchange Overly Areas.

The entire Bypass project has land use approval, but funding constraints preclude full construction of the project at this time. To address this situation and similar road improvement funding shortfalls elsewhere in Oregon, the Oregon Legislature, in 2009, enacted the Jobs and Transportation Act (JTA), which increased the state motor fuel tax, heavy vehicle weight mileage tax, and vehicle registration fees to fund state, county, and local transportation improvement and maintenance projects. Part of the increased funding was designated for a \$900 million transportation project bonding program. A joint house and senate committee selected the transportation projects for the bonding program. The committee used a list of transportation projects provided by the Oregon Transportation Commission (OTC) to select the projects and determine the amount of funding each project would receive. The OTC list included logical phases for large transportation projects where the cost of the entire project was too great to fit into the bonding program. The Bypass project was one such large project identified for construction in phases.

The JTA authorized \$192 million of bonds to be issued for the first construction phase (Phase 1) of the Newberg Dundee Bypass Project. Phase 1 will include construction of one lane of the Bypass in each direction (located on the westbound travel lanes of the eventual full Bypass), between Oregon 219 and Oregon 99W south of Dundee, about 4 miles in length. Access will be limited to the two ends of Phase 1. See Figure 1. Phase 1 also will include required local circulation changes needed to reconnect local roads disrupted by construction.

### **Transportation System Plan Amendment**

Under Newberg's current TSP, Wilsonville Road does not connect directly to Oregon 219. Instead, it ends where it connects onto Springbrook Road just east of Oregon 219. This transportation system plan amendment application would realign Wilsonville Road to connect it directly to Oregon 219 at the Phase 1 Bypass intersection with Oregon 219. It would also create a cul-de-sac on the portion of Wilsonville Road that currently connects to Springbrook Road.

The realignment of Wilsonville Road will improve connectivity between Wilsonville Road and Oregon 219 and meet Oregon Department of Transportation (ODOT) operating standards in 2016, the opening year of the Phase 1 Bypass. If left unimproved, the current Wilsonville Road/Springbrook Road intersection would not meet the City's operating standard in 2016 and would operate at a lower level of service than the No Build Alternative due to increased traffic on Springbrook Road following the opening of the Bypass. Therefore, ODOT proposes to cul-de-sac the northern portion of Wilsonville Road south of

Springbrook Road and reconnect Wilsonville Road to Oregon 219. Wilsonville Road will be realigned and connected to Oregon 219 at the new Phase 1 Bypass intersection. See Figure 2.

The connection of Wilsonville Road to Oregon 219 is an *interim* connection that is within the footprint of the Bypass and the Oregon 219 Interchange as shown in the Newberg Comprehensive Plan and TSP. When the full Bypass and Oregon 219 Interchange are built in a future phase, Wilsonville Road will be rerouted south to connect to Oregon 219 near Wynooski Road. The realignment of Wilsonville Road will remain in place until such time as the Bypass and the Oregon 219 Interchange are funded and constructed. The portion of Wilsonville Road that is converted to a cul-de-sac will be a permanent change. Note, the City may want to consider renaming the cul-de-sac portion of Wilsonville Road south of Springbrook Road to avoid confusion with realignment of Wilsonville Road to Oregon 219 and future changes in the alignment of Wilsonville Road when the full Bypass and Oregon 219 Interchange is built.

The Oregon 219/Wilsonville Road Phase 1 Intersection and roadway realignment will have the following design (See Figure 2):

- Extend Wilsonville Road west to connect to Oregon 219/Bypass intersection, to a new signalized intersection on Oregon 219.
- Construct westbound left, through, and right turn lanes on Wilsonville Road.
- Construct a five-lane section on Oregon 219 between Springbrook Road and the new Phase 1 Bypass intersection.
- Create a cul-de-sac section of the existing Wilsonville Road between the realignment and Springbrook Road.

### **Consistency with Statewide Planning Goals, Oregon Highway Plan, City of Newberg Comprehensive Plan, and Newberg Transportation System Plan**

The proposed TSP and related Comprehensive Plan map amendments are consistent with all applicable Statewide Planning Goals.

The goals identified below are the only Statewide Planning Goals applicable to the Phase 1 Wilsonville Road realignment. Goals not identified do not apply.

#### **A. Goal 1 (Citizen Involvement)**

Goal 1 requires the opportunity for citizens to be involved in all phases of the planning process. Generally, Goal 1 is satisfied when a local government follows the public involvement procedures set out in its acknowledged comprehensive plan and land use regulations.

The City of Newberg Comprehensive Plan requires the city maintain a Citizen Involvement Program that offers citizens the opportunity for involvement in all phases of the planning process. Compliance with these regulations results in compliance with Goal 1.

#### **B. Goal 2 (Land Use Planning), Part I**

Goal 2, Part I requires that actions related to land use be consistent with acknowledged comprehensive plans of cities and counties. It is specifically noted that the City of Newberg updated the Comprehensive Plan to include the Newberg Dundee Bypass.

Goal 2, Part I also requires coordination with affected governments and agencies, evaluation of alternatives, and an adequate factual base. In developing the Wilsonville Road realignment, ODOT engaged in coordination efforts with planners, officials, and other representatives of Newberg. The amendment also is consistent with the Phase 1 Bypass as authorized by the Oregon Legislature and approved by Yamhill County.

**E. Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources)**

Goal 5 requires local governments to adopt programs to protect natural resources and conserve scenic, historic, and open space resources for present and future generations as provided in the Oregon Department of Land Conservation and Development's Goal 5 administrative rule, OAR 660, Division 23.

Under OAR 660-023-0250(3)(b), local governments are not required to apply Goal 5 in post-acknowledgment plan amendment proceedings unless the amendment affects a Goal 5 resource to allow new uses that could be conflicting uses with a particular significant Goal 5 resource site. The Wilsonville Road realignment does not impact any resource sites inventoried and designated as significant under Goal 5. Therefore, Goal 5 does not apply.

**F. Goal 6 (Air, Water and Land Resources Quality)**

Goal 6 addresses the quality of air, water, and land resources. In the context of a comprehensive plan amendment, a local government complies with Goal 6 by explaining why it is reasonable to expect that the proposed uses authorized by the plan amendment will be able to satisfy applicable federal and state environmental standards, including air and water quality standards. Because the Wilsonville Road realignment is part of Phase 1, which provides the first step in implementing the Bypass project, and because the Bypass project is an approved project in the City of Newberg's acknowledged TSP and Comprehensive Plan, the Wilsonville Road realignment is consistent with the City's TSP and Comprehensive Plan findings of compliance with Goal 6.

By substantially relieving congestion in the region, the Bypass project will improve air quality. This 2013 amendment will help substantially relieve congestion in the region by facilitating implementation of Phase 1. Like the Bypass project in its entirety, the Wilsonville Road realignment will impact water resources by adding a small amount of impervious surface to the watershed area. Where areas are paved, water cannot penetrate the soils, so it rushes over the surface. This can increase erosion, increase the movement of fine sediments, and increase pollutant loads in watercourses. However, these impacts can adequately be mitigated through the use of effective land-based stormwater treatment systems that include measures to preserve and restore mature vegetation and maximize infiltration. The use of construction techniques that include temporary and permanent best management practices (BMPs) for erosion and sediment control and spill control and prevention also can achieve compliance with clean water standards. OHP 5A.1 directs ODOT to implement BMPs. These BMPs will apply to development of JTA Phase 1. Mitigation strategies have been identified and agreed to in the Newberg Dundee Tier 2 Final EIS.

Stormwater is also subject to statewide permits that are issued to ODOT. For construction activities, ODOT will comply with the terms and conditions of its statewide National Pollution Discharge Elimination System (NPDES) permit: 1200-CA. ODOT will also comply with the terms and conditions of its statewide MS4 permit for ongoing maintenance and operation of the highway. To comply with the terms of the permits, ODOT follows BMPs set out in the *Routine Road Maintenance Water Quality and Habitat Guide*, or Blue Book, which details the standard maintenance activities and describes how to perform them in the most environmentally sensitive way. The Blue Book, first published in 1999, is the basis for Endangered Species Act compliance with the National Marine Fisheries Service under the Clean Water Act's 4(d) exemption for maintenance activities. Goal 6 is met.

**H. Goal 8 (Recreational Needs)**

Goal 8 provides for local governments to meet the recreational needs of the citizens of Oregon. The Bypass project, including the Wilsonville Road realignment, will further Goal 8's objectives by improving access to recreational destination areas such as the Oregon coast, Yamhill County wineries, and the Spirit Mountain Casino. The proposed road realignment will not impact existing park or recreational lands.

**I. Goal 9 (Economic Development)**

Goal 9 requires local governments to adopt comprehensive plans and policies that "contribute to a stable and healthy economy in all regions of the state." The City of Newberg's Comprehensive Plan has been acknowledged to comply with Goal 9. The Bypass project, including the Wilsonville Road realignment to implement Phase 1, will improve mobility and accessibility generally, and freight movement in particular, throughout the Newberg Dundee urban area, thus resulting in substantially reduced congestion and hours of delay when compared to a No Build Alternative.

**J. Goal 10 (Housing)**

Goal 10 applies inside urban growth boundaries. While the Wilsonville Road realignment is within land zoned as medium-density residential, there are no impacts to housing, because the road will be placed on land that was previously roadway. Wilsonville Road will be reconnected to Oregon 219 in its previous location. Therefore, this action is consistent with Goal 10.

**L. Goal 12 (Transportation)**

Goal 12 requires local governments to "provide and encourage a safe, convenient, and economic transportation system." Goal 12 is implemented through the Transportation Planning Rule (TPR), OAR 660, Division 12. Because the Newberg Dundee Bypass Project is an approved project in the City of Newberg's acknowledged TSP, and the Wilsonville Road realignment is necessary to implement Phase 1 of the project, it is consistent with Goal 12 and with the TPR planning and coordination requirements. The Wilsonville Road realignment will improve connectivity between the Bypass, Oregon 219 and Wilsonville Road and avoid violating roadway performance standards on Springbrook Road by severing the connection between the two roads. The new intersection of Wilsonville Road and Oregon 219 will operate within ODOT's performance standards.

**M. Goal 13 (Energy Conservation)**

Goal 13 directs cities and counties to manage and control land and uses developed on the land to maximize the conservation of all forms of energy, based on sound economic principles.

The Bypass project, including JTA Phase 1 and the Wilsonville Road realignment, is intended to improve statewide and regional mobility through the area and to make existing Oregon 99W more accessible for local and regional traffic. The project will help relieve much of the substantial traffic congestion that already exists along Oregon 99W and that will only deteriorate further in its absence. Providing safe and convenient travel through an area and facilitating the efficient movement of people, goods, and services in that area serves the growth needs and objectives of the region and the state, and follows sound economic principles. Facilitating the smooth flow of traffic at acceptable levels of service also helps conserve fuel by avoiding the wasteful burning of fuel at intersections already above capacity or expected to exceed capacity during the planning period.

**Compliance with City of Newberg's Comprehensive Plan and Transportation System Plan**

In addition to compliance with applicable statewide planning goals, TSP amendments must comply with applicable local comprehensive plan policies (including relevant policies in adopted transportation system plans) and with applicable standards in local land use regulations.

The findings below address only those policies and associated actions that are directly applicable to the Wilsonville Road realignment.

**Compliance with City of Newberg's Comprehensive Plan**

The City of Newberg adopted a comprehensive plan in 1981 following a major planning effort. The 1981 plan directed the bulk of urban development to existing urban centers and also called for the preservation of highly productive farm and forestlands. The 1981 plan provided for rural residential development in limited areas. The 1981 Comprehensive Plan was updated in 1991 to address the requirements of the statewide planning goals. As required by State Senate Bill 100, the plan addresses and is consistent with established statewide goals and guidelines. At the same time, the goals and policies included within the plan reflect primarily local concerns.

**A. Citizen Involvement**

Policy A, Citizen Involvement, notes that the City of Newberg will continue to implement an ongoing citizen involvement program that provides residents opportunity to be involved in all phases of the planning process. For the Wilsonville Road realignment, the city will provide public notice to affected property owners, opportunities for testimony at public hearings, and appeal of local decisions.

**B. Land Use Planning**

The goal is to maintain an ongoing land use planning program to implement statewide and local goals. The program shall be consistent with natural and cultural resources and needs.

The Wilsonville Road realignment is consistent with the land use planning goal because it will help implement Phase 1 of the Bypass which is an approved project in the Newberg TSP and Comprehensive Plan.

**H. The Economy**

The goal is to develop a diverse and stable economic base.

The Phase 1 Bypass Project, including the Wilsonville Road realignment, will improve mobility and accessibility generally, and freight movement in particular, throughout the Newberg Dundee urban area, thus resulting in substantially reduced congestion and hours of delay when compared to a No Build Alternative. This supports the goal of developing a diverse and stable economic base.

**M. Energy**

Goal M, Energy, is to conserve energy through efficient land use patterns and energy-related policies and ordinances.

The Bypass project, including Phase 1 and the Wilsonville Road realignment, is intended to improve statewide and regional mobility through the area and to make existing Oregon 99W more accessible for local and regional traffic. The project will help relieve much of the substantial traffic congestion that already exists along Oregon 99W. Facilitating the smooth flow of traffic at acceptable levels of service also helps conserve fuel by avoiding the wasteful burning of fuel at intersections already above capacity or expected to exceed capacity during the planning period.

**There is a public need for a change of the kind in question.**

The public need for this amendment is because the Preferred Alternative of the Bypass will be constructed in phases. Because it is being constructed in phases, there is a need for temporary connections between existing infrastructure and the new Bypass segment (Phase 1). The realignment of Wilsonville Road will substantially improve connectivity between Wilsonville Road and the Bypass, Oregon 219, and Oregon 99W.

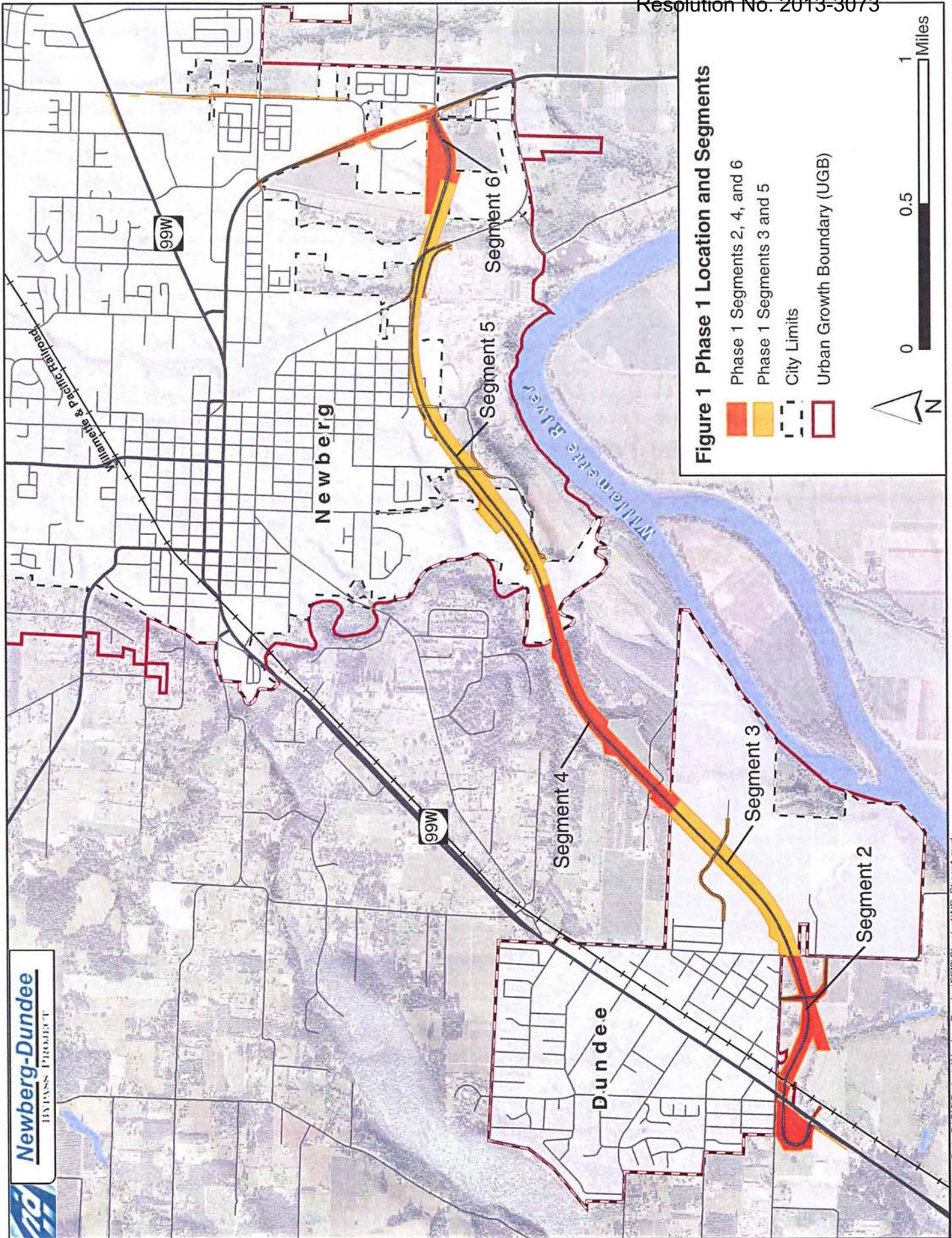
**The need will be best served by changing the classification of the particular piece of property in question as compared with other available property.**

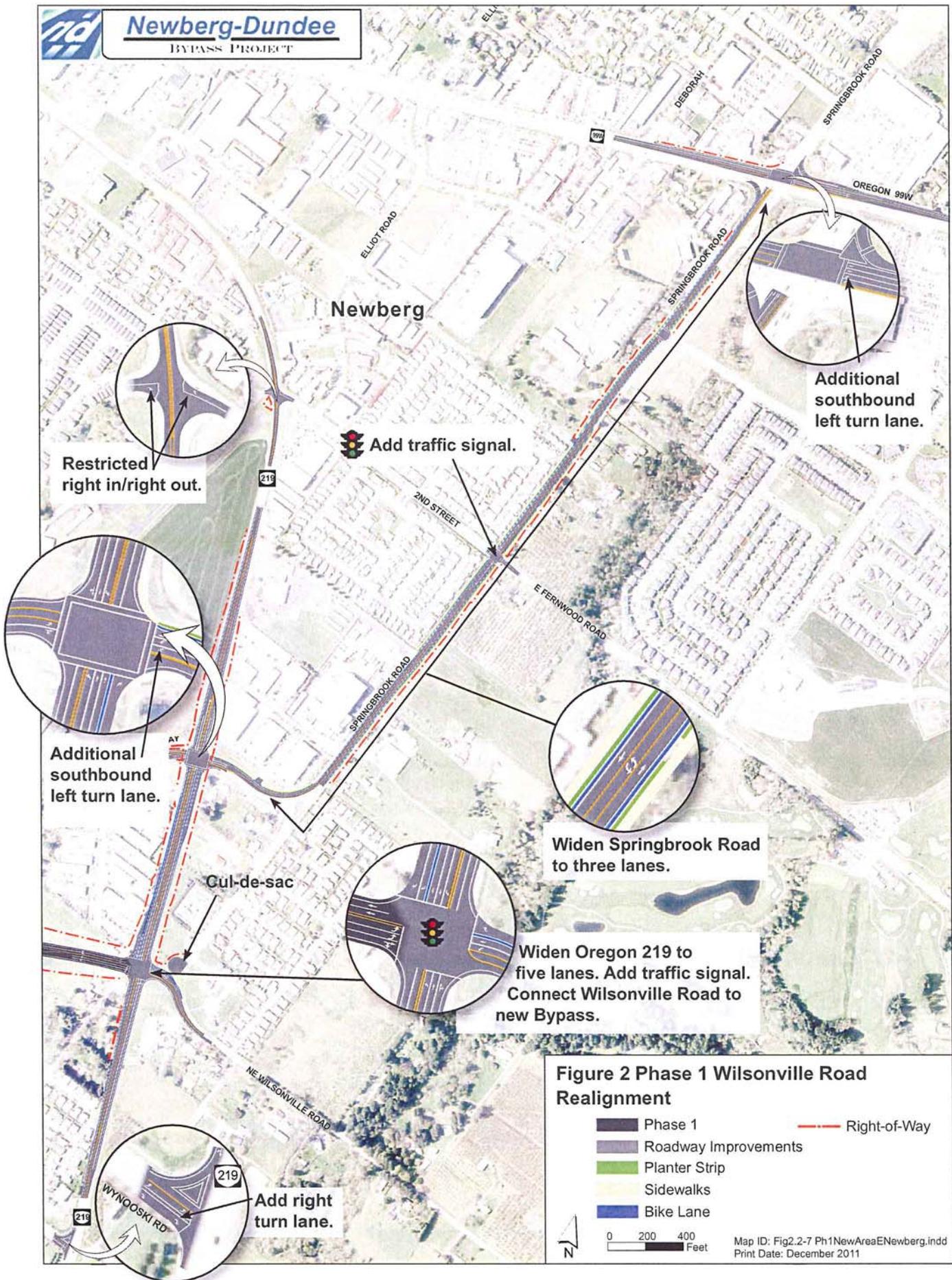
There is no reclassification of the property in question. The route the Wilsonville Road will be on was formerly roadway. This effort is a *reconnection* of Wilsonville Road to Oregon 219. The action is entirely within the Newberg city limits and urban growth boundary.

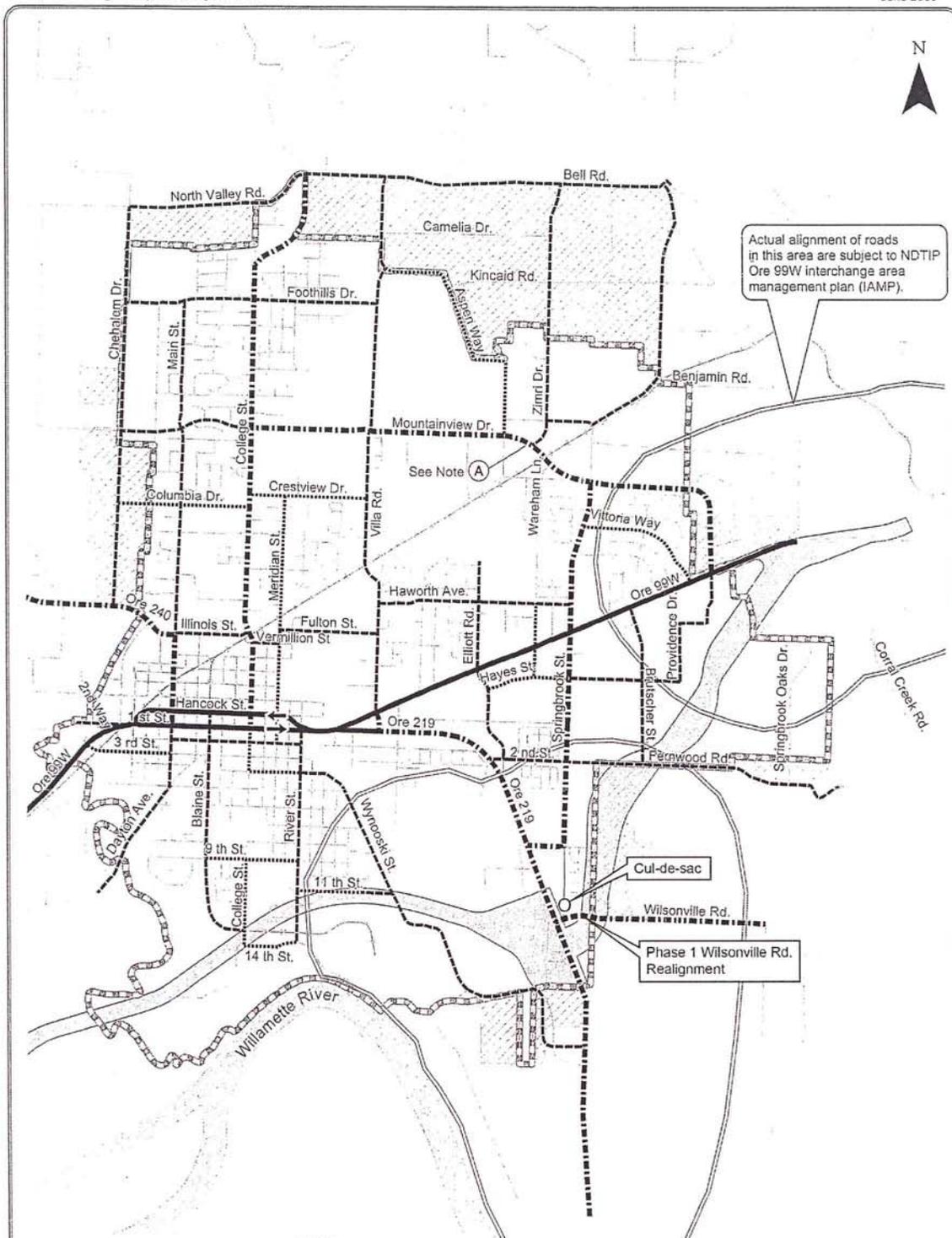
**Newberg TSP Text Change Proposal**

(From page 124 of 2005 TSP.)

6. Wilsonville Road: Wilsonville Road is to be extended to the west to connect to Oregon 219. A cul-de-sac will be placed on Wilsonville Road between the new extension to Oregon 219 and Springbrook Road. The rerouting and extension of Wilsonville Road will be constructed to minor arterial street standards. The purpose of this project is to provide access to Phase 1 of the Bypass at acceptable levels of service and improve safety. The improvement will comply with ODOT spacing standards for a District Highway. See TSP Figure 6-1 (attached) for a conceptual plan of this project.







Actual alignment of roads in this area are subject to NDTIP Ore 99W interchange area management plan (IAMP).

See Note A

Cul-de-sac

Phase 1 Wilsonville Rd. Realignment

Notes:

- A The configuration and alignment of Mountainview Drive in this area is subject to the major street alignment location review process as outlined in the development code.
- Street located outside of Urban Growth Boundary are outside of Newberg's jurisdiction. If a proposed roadway alignment extends outside the UGB, then a plan amendment is required. Improvements recommended would need to be coordinated with Yamhill County.

LEGEND	
	Statewide Highway
	Major Arterial
	Minor Arterial
	Major Collector
	Minor Collector
	Interchange Area Management Plan Boundary
	Urban Growth Boundary
	Urban Reserve Area
	Railroad
	Streets
	River

FUNCTIONAL CLASSIFICATION PLAN  
NEWBERG, OR.

FIGURE  
6-1

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 19, 2013

Order \_\_\_ Ordinance \_\_\_ Resolution \_\_\_ Motion XX Information \_\_\_  
No. No. No.

SUBJECT: Approve the July 15, 2013, City Council Meeting minutes.

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

## RECOMMENDATION:

Approve City Council minutes for preservation and permanent retention in the City's historical records.

## EXECUTIVE SUMMARY:

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

## FISCAL IMPACT:

None.

## STRATEGIC ASSESSMENT:

None.

**CITY COUNCIL MINUTES**  
**JULY 15, 2013**  
**7:00 P.M. MEETING**  
**PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

An Executive Session pursuant to ORS 192.660(2)(i) relating to the performance review of the city manager was held during the work session at 6:00 p.m. preceding the meeting. All Councilors, the Mayor, and city manager 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 Stephen McKinney	Ryan Howard Lesley Woodruff	Denise Bacon
Members Absent:	Mike Corey (Excused)	Bart Rierson (Excused)	
Staff Present:	Daniel Danicic, City Manager Terry Mahr, City Attorney Leah Griffith, Library Director	Barton Brierly, Planning and Building Director Norman Alley, City Recorder Mandy Dillman, Minutes Recorder	
Others Present:	Geoff Godfrey and Chris Koch		

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**IV. CITY MANAGER'S REPORT**

Mr. Daniel Danicic, city manager, reported the Special Olympics was held over the weekend in Newberg and all went very well. Earlier this week the Department of Environmental Quality (DEQ), Waste Management, the city of Newberg, and the city of Dundee met to discuss glass recycling. It was determined Waste Management will do a cost analysis for once a month or bi-monthly separate curbside glass recycling compared to comingled glass recycling and will present the findings at a joint meeting with Dundee. The planning commission passed a conditional use permit for the Suntron building to become a winery, which is a good sign to citizens the city's economy is on the mend. Last week the county commissioners considered the Urban Growth Boundary (UGB); however, their legal counsel did not complete the paperwork on time, so it was not adopted and will be revisited this Thursday.

**V. SPECIAL PRESENTATION**

Consider approving a Proclamation declaring July 25-28, 2013, as Newberg Old Fashioned Festival Week.

Mayor Andrews read the proclamation and presented it to the princesses of Old Fashioned Festival Court.

<b>MOTION:</b> Bacon/Woodruff approving a Proclamation declaring July 25-28, 2013, as Newberg Old Fashioned Festival Week. (5 Yes/0 No/2 Absent [Corey, Rierson]).
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## VI. COUNCIL APPOINTMENTS

Consider appointing Geoff Godfrey and Chris Koch to the Newberg Public Library Advisory Board.

Mayor Andrews excused Councilor Lesley Woodruff for conflict of interest.

**MOTION: Bacon/McKinney** appointing Geoff Godfrey and Chris Koch to the Newberg Public Library Advisory Board. (4 Yes/0 No/2 Absent [Corey, Rierson]/1 Abstain [Woodruff]).

Ms. Leah Griffith introduced Mr. Geoff Godfrey and Mr. Chris Koch and both spoke a little about themselves.

## VII. PUBLIC COMMENTS

Mayor Andrews opened and closed public comments as there was no one to testify.

## VIII. CONSENT CALENDAR

1. Consider a motion adopting **Resolution No. 2013-3051** granting an extension of the farmland lease between the City and Kirsch Family Farms, Inc.
2. Consider a motion adopting **Resolution No. 2013-3061** authorizing the city manager to enter into a construction contract for the Thin Street Overlay Project on Vittoria Way.
3. Consider a motion adopting **Resolution No. 2013-3064** authorizing the city manager to enter into a construction contract for the Pavement Restoration Project.
4. Consider a motion adopting **Resolution No. 2013-3065** authorizing the city manager to execute an IGA with ODOT to provide right-of-way services for Springbrook Road.
5. Consider a motion approving the June 17, 2013, City Council meeting minutes.

**MOTION: Woodruff/Howard** approving a motion adopting **Resolution No. 2013-3051** granting an extension of the farmland lease between the City and Kirsch Family Farms, Inc., **Resolution No. 2013-3061** authorizing the city manager to enter into a construction contract for the Thin Street Overlay Project on Vittoria Way, **Resolution No. 2013-3064** authorizing the city manager to enter into a construction contract for the Pavement Restoration Project, **Resolution No. 2013-3065** authorizing the city manager to execute an IGA with ODOT to provide right-of-way services for Springbrook Road, and the June 17, 2013, City Council meeting minutes. Motion carried (5 Yes/0 No/2 Absent [Corey, Rierson]).

## IX. PUBLIC HEARINGS

Consider a motion adopting **Resolution No. 2013-3063** approving the sale of a portion of city property to ODOT for right-of-way purposes.

*This item was pulled from the agenda.*

## **X. NEW BUSINESS**

Presentation from the Planning and Building Department regarding the Newberg Development Code Zoning Use Table update.

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

Mr. Danicic asked if switch pump stations could be allowed in residential areas. Mr. Brierley explained they are allowed anywhere they are needed, as well as other things like reservoirs.

Mayor Andrews asked what questions arose from the planning commission public comments on the subject. Mr. Brierley said they heard from many citizens interested in wineries and some interested in daycares.

## **XI. COUNCIL BUSINESS**

TIME – 7:49PM

Mayor Andrews asked how many council members will be joining them in the parade. Mr. Danicic replied Council Howard and Councilor Rierson will not be present. Mayor Andrews asked for information on their participation and Mr. Danicic informed him of the details.

Mayor Andrews gave a recap on the mayor's bocce ball tournament at the Special Olympics.

## **XII. ADJOURNMENT**

The meeting adjourned at 7:57 PM.

**ADOPTED** by the Newberg City Council this 19<sup>th</sup> day of August, 2014.

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Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 22<sup>nd</sup> day of August, 2014.

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Bob Andrews, Mayor

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 19, 2013

Order \_\_\_ Ordinance XX Resolution \_\_\_ Motion \_\_\_ Information \_\_\_  
No. No. 2013-2763 No.

**SUBJECT: Amendment creating a new Zoning Use Table**

Contact Person (Preparer) for this  
Motion: Barton Brierley  
Dept.: Planning and Building  
File No.: DCA-12-002

HEARING TYPE:  LEGISLATIVE  QUASI-JUDICIAL  NOT APPLICABLE

## RECOMMENDATION:

Adopt Ordinance No. 2013-2763, amending the Newberg Development Code to adopt a new zoning use table.

The proposed amendments would do the following:

1. Reorganize the lists of permitted and conditional uses in each zone into one table.
2. Organize many specific uses into general categories.
3. Add definitions and clarify terms.
4. Make a few modifications to the permitted and conditional uses in each zone to clarify what uses are allowed, improve consistency, comply with state and federal laws, and better meet the intent of each zone.

## EXECUTIVE SUMMARY:

Newberg has had a zoning ordinance since the 1950's. The earliest zoning ordinance divided the city into several zones, and then listed the uses that would be allowed in each of those zones. This zoning ordinance has evolved through many amendments into the current Development Code. While the Development Code has been updated many times, it still contains much of the same structure and some of the same language as the earliest zoning ordinance.

The list of uses allowed in each zone has grown. It contains many relics of the past, such as "reducing salons" and "fumigation chambers," and fails to address many more modern uses, such as wineries and data centers. In addition, the code does not define many terms, so a term such as "variety store" can be interpreted different ways.

In order to update and modernize the code, the Newberg Planning Commission worked over the past year to develop recommended changes. The Commission has proposed changes that would:

1. Put all the uses into one table so users can easily see which zone a particular use is allowed in.
2. Consolidate the uses into more general categories. For example, beauty salons, barber shops, and tanning salons would all be considered "Personal Services" uses.
3. Add definitions for all terms.
4. Make several changes required by state and federal laws. For example, the changes bring code into conformance with laws regarding day care uses, churches, cemeteries, and group care homes.

The changes are largely a reorganization of existing codes, rather than a change in policy. However, the Planning Commission did consider whether some uses either currently allowed or not allowed truly fit the

purpose of each zone. The Commission made some recommendations for changes. For example, garbage dumps are currently a conditional use in residential zones, and the Commission felt they were incongruous with purpose of residential zones. On the other hand, personal service uses, such as barber shops and beauty salons, appeared to fit in with the purpose of the “Residential-Professional” zone. A list of the changes recommended can be found in Exhibit “1”.

**FISCAL IMPACT:**

None

**STRATEGIC ASSESSMENT:**

The proposed amendment would help modernize and clarify the Development Code. It also would serve to expand allowances for some uses, such as wineries, parks. It would bring the code into line with several state and federal laws.

Attachments:

To RCA

1. Summary of Proposed Changes
2. Planning Commission Resolution 2013-299 (attachments by reference)
3. Planning Commission minutes March 14, 2013
4. Planning Commission minutes June 13, 2013
5. Letter from John Bridges May 9, 2013

To Ordinance No. 2013-2763

Exhibit “A”: Newberg Zoning Use Table Development Code Amendments

Exhibit “B”: Findings

***Newberg Zones***

Newberg has a zoning map that designates each area of the city as a particular zone. The zones are:

- Residential Zones

R-1 Low Density Residential District.

R-2 Medium Density Residential District

R-3 High Density Residential District

R-4 Manufactured Dwelling District

- Commercial Zones

C-1 Neighborhood Commercial District.

C-2 Community Commercial District.

C-3 Central Business District.

C-4 Riverfront Commercial District

- Industrial Zones

M-1 Limited Industrial District.

M-2 Light Industrial District.

M-3 Heavy Industrial District.

M-4 Large Lot Industrial District. The M-4 industrial employment district is divided into two subdistricts: the industrial employment subdistrict and the industrial commercial subdistrict.

- Special Purpose Zones

RP Residential-Professional District.

I Institutional District.

CF Community Facilities District.

AI Airport Industrial District.

AR Airport Residential District.

SD Springbrook District

**Newberg Development Code potential changes affecting specific types of uses (July 2013)**

Newberg has a zoning map that designates each area of the city as a particular zone. The zones are:

**Residential Zones:** R-1, R-2, R-3, R-4

**Commercial Zones:** C-1, C-2, C-3, C-4

**Industrial Zones:** M-1, M-2, M-3, M-4

**Special Purpose Zones:** RP, I, CF, AI, AR, SD

**Agricultural uses** in M-2 and M-3 zones would be limited to pre-existing uses. Permits for home livestock raising would be limited to R-1, R-2, and AR zones.

**Biochemical and X-ray laboratories** would only be allowed in RP as "outpatient laboratories," unless part of a medical office campus.

**Churches** in industrial zones would be allowed only in the M-2 zone and limited to those that easily could be converted to industrial uses.

**Commercial Educational Services** such as dance and music schools would be a conditional use in R-1, R-2, RP, C-1, and AR.

**Commercial Services.** A broader range of commercial service uses would be a permitted use in C-1.

**Conditional uses in any zoning district.** The development code currently includes a list of conditional uses allowed in any zoning district. The proposal would limit these as follows:

**Airports and landing fields** would be conditional uses only in M-2, M-3, and permitted in AI.

**Amusement parks, carnivals** (over 2 weeks) would be permitted in C-2 and conditional in M-2.

**Cemeteries** would continue to be a conditional use in any zoning district. Burials would need to be within approved cemeteries.

**Facilities for the care and/or lodging of alcoholics or mental hospitals** would be classified as "residential care homes," "residential care facilities," "group care facilities," "hospitals" or "dormitories" depending on the number of residents and licensing and nature of the use, and allowed in the zones that allow those uses.

**Garbage dumps, sanitary landfills and solid waste collection facilities** would be limited to M-3 and M-4 zones.

**Pounds and kennels** would be limited to conditional uses in C-2, C-3, M-1, and M-4, and permitted in M-2, M-3. Hobby kennels (keeping of four or more adult dogs at a private residence) would no longer require a conditional use permit from Planning Commission, but instead would require a permit from the animal control officer.

**Prisons** would be limited to conditional uses in M-zones.

**Race tracks**, including drag strips and go-cart tracks would no longer be permitted in residential zones, but only a conditional use in M-2.

**Wastewater treatment plants** would no longer be conditional uses in residential zones, commercial zones, M-1, CF, I, AR, and AI.

**Day care.** The proposal would permit day care facilities in the C-3 zone. It would make day care a conditional use in the M-1, M-2, and M-3 zones. The proposal also would allow family child care homes in conformance with ORS 657A.

**Food and beverage production.** Retail food production such as small scale breweries, wineries, distilleries, and bakeries would be allowed in commercial areas. Certain requirements would apply. Food and beverage production would become a permitted use in M-1 and M-2 instead of a conditional use.

**Home occupations.** The proposal would allow home occupations to be conducted within existing residences in non-residential zones.

**Parking areas** would be a conditional use in the RP and C-1 zone.

**Parks** would become permitted uses in commercial zones.

**Personal services** such as beauty salons and tanning salons would be a permitted use in RP zones.

**Planned unit developments** would no longer require a conditional use permit in residential zones. They still would require Planning Commission review and approval.

**Recreational uses.** A broader range of recreational uses would be allowed in M-2, but the uses would be limited to those that could easily be converted to industrial uses, such as not having fixed seating.

**Repair garages** serving trucks and large vehicles would become a conditional use in the C-2 zone rather than a permitted use.

**Residential care facilities** would be permitted uses in R-2 and R-3 to comply with ORS 197.665.

**Retail sales.** A broader range would be allowed in C-1 and C-4.

**Storage uses.** A wider variety of storage uses would be allowed in M-1, but would require a conditional use permit if outdoors.

**Traded sector industry offices** would be permitted in C-2, C-3, M-1, M-2, and M-4, and permitted in RP and C-1 if 10,000 square feet or less.

**Vacation rental homes** would specifically be allowed, but would be subject to standards relating to registration, parking, trash collection, and maintenance.



**PLANNING COMMISSION RESOLUTION 2013-299**

---

A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL AMEND THE  
NEWBERG DEVELOPMENT CODE ZONING USE TABLES

---

**RECITALS**

1. The Newberg Development Code lists of permitted and conditional uses in each zone are lengthy, outdated, and contain some discrepancies, gaps, and overlaps. In addition, some changes need to be made to conform to state and federal laws.
2. On March 8, 2012, the Newberg Planning Commission initiated changes to update the zoning use lists.
3. The attached changes provide a better organization for the zoning use lists, better meet the intent of each zone, correct errors and discrepancies, comply with certain state and federal laws.
4. After proper notice, the Newberg Planning Commission held a hearing on March 14, 2013 and June 13, 2013 to consider the amendment. The Commission considered testimony and deliberated.

**The Newberg Planning Commission resolves as follows:**

1. The Commission recommends that the City Council adopt the amendments to the Newberg Development Code as shown in Exhibit "A". Exhibit "A" is hereby adopted and by this reference incorporated.
2. The findings shown in Exhibit "B" are hereby adopted. Exhibit "B" is by this reference incorporated.

**Adopted by the Newberg Planning Commission this 13<sup>th</sup> day of June, 2013.**

A handwritten signature in blue ink, appearing to read "Andy Stahl", written over a horizontal line.

Planning Commission Chair

ATTEST:

A handwritten signature in blue ink, written over a horizontal line.

Planning Commission Secretary

List of Exhibits:

- Exhibit "A": Development Code Text Amendments
- Exhibit "B": Findings

**Ordinance No. 2013-2763 RCA Attachment "3"**

**PLANNING COMMISSION MINUTES**

**March 14, 2013**

**7:00 p.m. Regular Meeting**

**Newberg Public Safety Building**

**401 E. Third Street**

**I. CALL MEETING TO ORDER**

Chair Cathy Stuhr opened the meeting at 7:00 PM

**II. ROLL CALL**

Members Present: Cathy Stuhr, Chair Art Smith, Vice Chair  
Jason Dale Allyn Edwards  
Philip Smith Antonio Saavedra, Student PC

Members Absent: Gary Bliss (excused) Mayor Bob Andrews, Ex-Officio

Staff Present: Barton Brierley, Planning & Building Director  
Steve Olson, Associate Planner  
DawnKaren Bevill, Minutes Recorder

**III. CONSENT CALENDAR**

Approval of the February 13, 2013, Planning Commission Meeting Minutes.

**MOTION:** Art Smith/Philip Smith to approve the Consent Calendar including the planning commission minutes as amended for February 13, 2013. Motion carried (5 Yes/0 No).

**IV. PUBLIC COMMENTS**

No items were brought forward.

**V. LEGISLATIVE PUBLIC HEARINGS**

- REQUEST:** Amend the Newberg Development Code to replace the zoning use lists with comprehensive zoning use table  
**FILE NO.:** DCA-12-002 **RESOLUTION NO.:** 2013-003

Chair Cathy Stuhr opened the Legislative Public Hearing and asked for the staff report.

Mr. Barton Brierley, Building & Planning Director, presented the staff report accompanied by a PowerPoint presentation reviewing the amendments to the Newberg Development Code (see official meeting packet for full report).

Chair Stuhr referred to the meeting packet, page 34, Section 15.303.325, and stated the titles do not match and the sizes need to be distinguished.

## Ordinance No. 2013-2763 RCA Attachment "3"

Vice Chair Art Smith suggested listing the codes across the bottom of the page, making it more user friendly.

Commissioner Edwards suggested shading every other line due to the lack of color in the graph.

### **Chair Stuhr opened the public testimony starting with proponents.**

TIME – 7:35 PM

Alex Sokol Blosser, Sokol Blosser Winery, is pleased to see the upcoming changes in the code. He encouraged the city to approve wineries as a permitted use as the wine industry is growing rapidly and the code change will allow more flexibility.

Chair Stuhr closed public testimony at 7:39PM.

Commissioner Edwards asked if there will be a new zoning map to accompany the new zoning table. Mr. Brierley replied an interactive zoning map is on the website and a code is located on the map, but they are not currently able to link the code to the zoning map. Mr. Brierley will research it further.

Chair Stuhr referred to kennels on page 17 and stated her concern as the definition being taken out has a restriction on the number of animals. By code, a neighbor could have 10 dogs as personal pets under the new definition. She researched the definition of kennels for the cities of West Linn, McMinnville, and Beaverton and suggested redefining kennels in the code with restrictions on the total number of dogs.

Chair Stuhr referred to the horticulture definition on page 16 and asked are items allowed for sale in residential zones if raised for commercial purposes. Commissioner Edwards suggested it should be non-residential for resale purposes. Commissioner Philip Smith suggested allowing the raising of crops for commercial purposes but selling off-site. Mr. Brierley will re-define it in the draft and bring it back for the commission to review.

Chair Stuhr suggested consistency regarding an "x" and an empty cell in the table. Mr. Brierley explained an empty cell means it is not permitted. An "x" was only placed under livestock and poultry farming making it clear it is not allowed in any zone.

Steve Olson, Associate Planner, suggested that the sales limit (on site sales limited to 10% of total sales) for on site sales at light industrial uses be deleted, since it would be difficult to enforce and the code already limits the floor area of the retail accessory use. Commissioner Philip Smith and Chair Stuhr agreed that this made sense.

Barton Brierley's closing comments stated that he would revise the draft to incorporate the suggested changes. We will review the final draft at a future Planning Commission meeting, which would probably be in two months.

### **VII. ITEMS FROM STAFF:**

TIME – 8:00 PM

1. Update on Council items.

Mr. Brierley reported the South Industrial Urban Growth Boundary Amendment is still moving forward. The City Council voted again with a vote of six-to-one in favor.

2. Other reports, letters, or correspondence.



## Ordinance No. 2013-2763 RCA Attachment "4"

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

Mr. Brierley explained at the last meeting commissioners expressed general agreement with the proposal and gave specific suggestions for changes. Those changes have been made and are reflected in the new packet.

Commission Art Smith was concerned that by making distinctions between categories and specific areas, they are making the document more confusing.

Chair Stuhr re-opened public testimony.

Mr. John Bridges gave testimony on allowing daycare centers as a conditional use in industrial zones. He shared information he had gathered from other communities in regards to this, which showed most surrounding cities do allow daycares in industrial zones.

Chair Stuhr expressed her concern with allowing daycares in industrial areas, which may result in one being opened in a heavy industrial area and could be hazardous to children. Mr. Bridges explained a daycare could be inside a business in a heavy industrial area to prevent pollution issues; however, Newberg does not have a lot of heavy industrial. He mentioned Newberg has a higher per capita basis of manufacturing jobs than anywhere else in the state.

Student Commissioner Antonio Saavedra thanked him for his request, and expressed his concern that the safety of the children should come first. Mr. Bridges explained his proposal allows the commission to analyze applications as a conditional use, and if it is a dangerous site for a daycare, they would have the ability to not allow the application. Mayor Andrews asked about daycares inside industrial facilities and it was determined businesses across the country have daycares inside and in order to do so they must be considered an accessory use. Mr. Bridges brought to their attention Newberg's current code does not preclude industrial companies from having an inside daycare as an accessory use, but do preclude it as a stand alone business.

Mr. Brierley described the four types of industrial zones the city has: M-4 which has conditional use daycare, M-3 which is really heavy industry and can only have a daycare if it is inside and a stand alone daycare would not be allowed, M-2 which is the broadest industrial area and includes daycares as accessory uses, and M-1, which is not a very common zone.

Staff recommends approval of **PC-2013-299**, recommending the city council adopt the changes to the zoning use table.

Commissioner Jason Dale asked what the criteria would be for M-1 and M-2 zones. Mr. Brierley said they are already listed in the code as conditional use criteria. Examples of criteria would include being compatible to the surrounding areas, attractiveness, yard space, wall and fence dimensions, parking lots, and regulations for noise.

**MOTION:** P Smith/A Smith approval of **PC-2013-299**, recommending the city council adopt the changes to the zoning use table and make daycares a conditional use in M-1 and M-2.

## Ordinance No. 2013-2763 RCA Attachment "4"

Commissioner Philip Smith asked what M-4's permitted use is currently. Mr. Brierley replied it is a conditional use similar to the other zones. Commissioner Art Smith said he feels all four zones should be allowed and the commission can determine which are allowable on a case by case basis. Chair Stuhr agreed with commissioner Art Smith, stating it would be simpler.

Student Commissioner Saavedra expressed again his desire to keep Newberg safe in the future and stressed they should look decisively into each case to determine the eligibility.

**MOTION:** P Smith/A Smith approval of PC-2013-299, recommending the city council adopt the changes to the zoning use table and make daycares a conditional use in M-1, M-2, and M-3. Motion carried (3 Yes/1 No [Dale]/2 Absent [Edward, Bliss]).

2. **APPLICANT:** Newberg City Council  
**REQUEST:** Create a policy regarding motorist information follow-up signs on city streets  
**LOCATION:** City wide  
**FILE NO.:** G-13-002 **RESOLUTION NO.:** 2013-298

Barton Brierley presented the staff report. Staff recommends adoption of Resolution No. 2013-298, to create a policy regarding motorist information follow-up signs on city streets.

Discussion commenced on the follow-up sign criteria. It was determined the sign must be required by the state as a follow-up sign to an approved state highway sign in order to be considered. Additionally there is a limit of two signs per business.

Chair Stuhr mentioned the wording on page 111. It was decided to change the wording from "approval resides with the business or operator" to "approval is granted to the business operator".

Chair Stuhr opened and closed public testimony as there was no one to testify.

**MOTION:** P Smith/Dale approval of PC-2013-298 to create a policy regarding motorist information follow-up signs on city streets, as amended. Motion carried (Yes/0 No/2 Absent [Edward, Bliss])

### VI. ITEMS FROM STAFF

1. Update on Council items

Mr. Brierley mentioned there was a hearing last Thursday for the UGB amendment by the county commissioners with the record being left open until 5:00PM today to add testimony. Next Thursday the city will submit additional comments and on June 27, 2013, the county commissioners are scheduled to deliberate. At the next planning commission meeting there will be a new planning commissioner.

Student Commissioner Saavedra explained he has been working on getting another student to join the planning commission.

**BROWN, TARLOW, BRIDGES  
PALMER & STONE PC  
Attorneys at Law**

ALLYN E. BROWN  
JOHN T. BRIDGES  
STEPHEN C. PALMER  
TRUMAN A. STONE  
RICHARD P. BROWN

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May 21, 2013

City of Newberg  
c/o Barton Brierley, AICP  
P.O. Box 970  
Newberg, OR 97132

**Re: Our Client: Curtis Goodwin  
Newberg Development Code - Zoning Use Table**

Dear Mr. Brierley:

On behalf of my client, Curtis Goodwin, we would request that there be a change to the Zoning Use Table currently proposed. We would request the change on Line Item 212, Daycare Facilities. We request that they be permitted, conditionally, in all of the Industrial Zones. I believe that this makes good planning sense, as the City needs flexibility to allow care facilities in and around where people are working. That placement, when appropriate, would reduce travel, environmental impacts, and improve livability.

We have engaged in a survey of our surrounding communities. As you are aware, the City is in competition to attract businesses of all nature. The City should maintain as much flexibility as our surrounding competitors, communities of like size and geographic area. As you will note from the enclosed documentation, Tigard, Sherwood, Hillsboro, and McMinnville all allow for daycare centers in their industrial zones, some even as a permitted use. To be competitive with these other communities, we need to be capable of at least conditionally permitting these uses.

I know the City has worked hard to re-evaluate its industrial zone base. It has generated a potentially large industrial site. It would be very poor planning, if the whole acreage was developed out with industrial uses, and there was no capacity for support services. One important support service is daycare or child care. Without the proposed change we could conceptually cause people to travel from a home that is mere feet from the industrial area to a commercial district to drop off their kids, just to turn around and return to the industrial area.

Barton Brierley, AICP

**Re: Newberg Development Code - Zoning Use Table**

May 9, 2013

Page 2

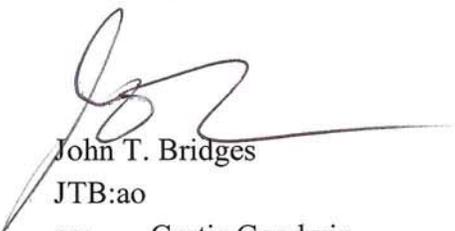
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Essentially, as Hillsboro has recognized, a daycare center is really a commercial support service for an industrial park.

Please share these materials with the Planning Commission and City Council. We intend to participate in the public hearing process.

Yours truly,

BROWN, TARLOW, BRIDGES, PALMER & STONE PC



John T. Bridges

JTB:ao

cc: Curtis Goodwin

DECLARATION OF JOHN T. BRIDGES

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1.

I am the attorney representing Curtis Goodwin.

2.

I engaged in a survey of other communities' code provisions as it relates to allowing Daycare or Child Care Centers in Industrial Zones. Attached as Exhibit 1 is a true copy of the three Industrial Zoning Districts in McMinnville, Oregon. Note, a Daycare Facility is a conditional use, see pages 2, 6, and 9.

3.

Attached as Exhibit 2 is a true copy of the Municipal Code for Sherwood, Oregon. Sherwood, Oregon has four industrial zones. The table indicates that Child Care as a secondary use is outright permitted and a stand alone Daycare is a conditionally allowed use.

4.

Attached as Exhibit 3 is a copy of the Hillsboro Municipal Code. It contains both an Industrial Park Zone and Industrial Zone. In the Industrial Park Zone, Daycares are a commercial support service outright permitted and in the general Industrial Zone, a Child Care Facility is a conditionally approved use.

**BROWN, TARLOW, BRIDGES,  
PALMER & STONE PC**  
515 E. First Street  
Newberg, Oregon 97132  
Ph: (503) 538-3138 / Fax: (503) 538-9812

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5.

Attached as Exhibit 4 is a copy of the Tigard Industrial Zoning District language. In all three industrial zones, Daycare Facilities are an allowed use, including outright permitted in a home setting and permitted as a stand alone facility.

**I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.**

DATED this 24 day of May 2013.



John T. Bridges, OSB #904206  
john@newberglaw.com

Chapter 17.36

M-L LIMITED LIGHT INDUSTRIAL ZONE

Sections:

- 17.36.010 Purpose.
- 17.36.020 Permitted uses.
- 17.36.030 Conditional uses.
- 17.36.040 Yard requirements.
- 17.36.050 Building height.
- 17.36.060 Use limitations.

17.36.010 Purpose. The M-L limited light industrial zone is intended to create, preserve, and enhance areas containing manufacturing and related establishments with limited external impact and with an open and attractive setting. (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.36.020 Permitted uses. In the M-L zone, the following uses and their accessory uses are permitted subject to the provisions of Sections 17.36.010:

1. Aerospace and aeronautics industries, including light sheet metal composite manufacturing, and their accessory uses;
2. Bottling plant;
3. Blueprinting;
4. Business or trade school or college;
5. Cabinet or carpenter's shop;
6. Contractor's equipment storage;
7. Caretaker's dwelling whenever the use requires the on-site residence of such person;
8. Freight depot;
9. Government buildings, including armories, maintenance, repair or storage facilities;
10. Laboratory for experiment, research or testing, except combustion-type motor testing;
11. Manufacturing and assembling of precision optics;
12. Manufacturing and assembling of precision testing equipment;
13. Manufacturing, assembling, testing and repairing of components, devices, equipment and systems of an electronic or electro-mechanical nature, such as, but not limited to:
  - a. Audio systems and photographs.
  - b. Coils, tubes, semiconductors and similar components.
  - c. Communication, navigation, transmission and reception equipment, control equipment and systems.
  - d. Data processing equipment and systems.
  - e. Metering instruments.

- f. Radar, infrared, and ultraviolet equipment.
- g. Radio, television, and telephone equipment.
- h. Scientific and chemical instruments;
- 14. Manufacturing of ceramic products using only previously pulverized clay and fired in kilns using low-pressure gas or electricity (brick and tiles not permitted);
- 15. Manufacturing or storage of ice;
- 16. Offices for engineers, architects, landscape architects, surveyors, and those engaged in the practice of designing, drafting, or graphics;
- 17. Parking lot, public or private;
- 18. Photographic film processing, photoengraving, photocopying and photostating;
- 19. Printing, publishing, or engraving plant;
- 20. Processing, packaging and storing of food or beverage excluding processing those involving rendering of fats and oils, or slaughtering; (as amended by Ord 4372, June 3, 1986)
- 21. Sewage pump station;
- 22. Electrical power substation;
- 23. Warehousing of previously prepared materials or products excluding explosive materials;
- 24. Water reservoir;
- 25. Wholesale distribution and sales facility;
- 26. Hospital, medical office and ancillary hospital uses;
- 27. Wireless communications facilities subject to the provisions of Chapter 17.55. (Ord. 4732, 2000; Ord. 4570 §1, 1994; Ord. 4463 §1, §3, 1989; Ord. 4372 §1(part), 1986; Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.36.030 Conditional uses. In the M-L zone, the following uses and their accessory uses may be permitted subject to the provisions of Chapter 17.74.030:

- A. Cable television ground receiving station;
- B. Cemetery;
- C. Day care facility;
- D. Other uses similar to the uses permitted or permitted conditionally;
- E. A privately owned and operated facility planned, located and laid out or modified and oriented for functional use for leisure time activities. The specific use and plan shall be enumerated at the time of application;
- F. Windmill, for generation of electricity or pumping water;
- G. Farm machinery sales and services. (Ord. 4463 §2, 1989; Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.36.040 Yard requirements. Except as required in "A", "B" and "C" below, there shall be no yards required in the M-L zone:

- A. For property zoned M-L fronting on Three Mile Lane, all buildings will be set back one hundred twenty feet from the centerline of said street;
- B. Side yard shall not be less than twenty feet when adjacent to a residential zone;

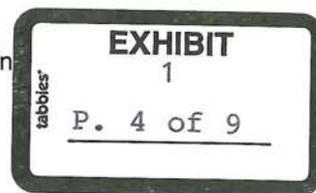
- C. Rear yard shall not be less than twenty feet when adjacent to a residential zone. (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.36.050 Building height. In an M-L zone, a building shall not exceed a height of sixty feet. (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.36.060 Use limitations. In an M-L zone, the following limitations shall apply to all uses:

- A. Development plans for any proposed use in the M-L zone must first be approved by the Planning Commission. The following areas must be addressed by the Commission prior to approval of the final development plans:
1. Noise Generation. The City will examine the potential noise generation of proposed developments and the potential impact of the noise on nearby residential areas. Landscaping, earthen berms, desirable building design and siting, limitations on operating hours or work locations, and/or other methods may be required to lessen noise. DEQ standards will be used by the City as a guideline.
  2. Traffic Generation. The City will examine the location of access points and the amount of traffic generated by proposed developments for impacts on surrounding areas. The Commission must determine that adequate streets exist or will be developed to handle expected traffic and that the proposed activity will not adversely impact streets in the area.
  3. Air and Water Pollution. The City will examine potential air and water pollution impacts of developments and may place restrictions beyond state DEQ standards where deemed necessary.
  4. Appearance. The City may require that the site be visually screened from neighboring areas through earthen berms, landscaping and/or other screening methods. This screening may fulfill portions of the required landscaping for the development.
- B. In an M-L zone, outside storage abutting or facing a residential zone shall be enclosed by a sight-obscuring fence. The fence shall obstruct the storage from view on the sides of the property abutting or facing a residential zone. The fence shall be of such material and design as will not detract from adjacent residences, shall be free of advertising, and shall be constructed according to plans submitted by the owner or his authorized agent and approved by the Planning Director. Outside storage in a required yard shall not exceed seven feet in height;
- C. All outside lighting shall be directed away from residential zones;
- D. A minimum of twenty-five percent of the development site shall be in open space or landscaping;
- E. A completed application and fifteen copies of the proposed development plan shall be submitted to the Planning Director a minimum of thirty days prior to the meeting at which the Commission will discuss the proposed development plans. (Ord. 4463 §4, 1989; Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

Ordin



tabbies

EXHIBIT

1

P. 4 of 9

Chapter 17.39

M-1 LIGHT INDUSTRIAL ZONE\*  
(as amended by Ord. 4522 Aug. 11, 1992)

Sections:

- 17.39.010 Purpose.
- 17.39.020 Permitted uses.
- 17.39.030 Conditional uses.
- 17.39.040 Design standards.
- 17.39.050 Environmental standards.

17.39.010 Purpose. The purpose of the M-1 Light Industrial zone is to provide appropriate locations for light industrial activities and to buffer these activities from adjacent commercial and residential development through the application of site development and environmental standards.

The zone is suitable for those businesses that can be operated within a wholly enclosed building (outside storage of materials permitted if properly screened), and which are engaged in the manufacturing, processing, assembly, packaging, or treatment of finished or semi-finished products from previously prepared or processed materials. Warehousing, wholesaling, and limited commercial use shall also be permitted; residential uses shall be prohibited. (Ord. 4522 §1(part), 1992).

17.39.020 Permitted uses. The following uses and their accessory uses are permitted:

- A. A use permitted in the M-L zone;
- B. Cable television ground receiving station;
- C. Compounding, processing, packaging, storing or other treatment of cosmetics, drugs, perfumes, bakery goods, candy, wood, pharmaceuticals, soap or toiletries, excluding all processes involving refining of fats or oils;
- D. Glass installation and sales;
- E. Green house and wholesale nursery;
- F. Laboratories: testing, medical, dental, photo or motion picture, except structural-mechanical testing laboratories;
- G. Laundry, dry cleaning or dyeing establishment (non-retail);
- H. Manufacture, repair or storage of articles from the following listed, previously prepared materials: bone, cellophane, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, precious or semi-precious stone or metal, shell, textiles, wax, wire, or yarn;
- I. Manufacture, repair or storage of ceramic products, musical instruments, novelties, rubber or metal stamps, toys, optical goods, scientific or precision instruments, medical or dental supplies or equipment, small electric or electronic supplies or equipment, business machines, video and computer equipment, hearing aids, small hand tools, watches or timing devices, luggage, photographic equipment, boats or furniture;

\* Prior history: Ords. 3380, 4128, and 4372.

**Ordinance No. 2013-2763 RCA Attachment "5"**

- J. Manufacture or assembly of bicycles, small electric generators and motors, sashes and doors, and vending machines;
- K. Manufacture or assembly of modular, manufactured, mobile or motor homes, or travel trailers and recreational vehicles;
- L. Manufacture, assembly, repair, or storage of sporting or recreation products;
- M. Mortuary and funeral home, including crematorium;
- N. Offices for administrative and professional uses related to the sale or service of industrial products;
- O. Plumbing, heating, electrical, paint or general contractor's storage, repair or sales shop;
- P. Public use structures and activities, excluding those listed in Section 17.39.030;
- Q. Repair, rental, sales, servicing or storage of machinery, boats, implements, equipment, manufactured homes, trailer coaches or motor vehicles;
- R. Sign painting, sale or repair shop;
- S. Storage and sales of building supplies or equipment;
- T. Storage and sales of frozen or refrigerated food;
- U. Tool and equipment rental;
- V. Upholstery shop;
- W. Veterinarian hospital or kennel, provided open runs or pens are not less than two hundred feet from a residential zone;
- X. Welding, sheet metal or machine shop;
- Y. Wood truss manufacturing;
- Z. Similar permitted uses, approved subject to the provisions of Section 17.54.010. (Ord. 4522 §1(part), 1992).

17.39.030 Conditional uses. The following uses and their accessory uses may be permitted, subject to the provisions of Chapter 17.74.030:

- A. Agricultural supply store, wholesale or retail;
- B. Recycling collection center;
- C. Service stations;
- D. Cemetery;
- E. Day care facility;
- F. Public uses, limited to sewage treatment plants, schools and churches;
- G. Other similar conditional uses, approved subject to the provisions of Section 17.54.010(C). (Ord. 4522 §1(part), 1992).

17.39.040 Design standards.

- A. Yard Requirements. There shall be no required yards, except as follows:
  - 1. Yards shall not be less than forty feet when adjacent to a residential zone or residential use. This requirement shall not apply to caretaker's dwellings, as permitted by this zone.
  - 2. Yards shall not be less than fifteen feet when adjacent to a commercial zone or commercial use.
  - 3. Yards shall not be less than fifteen feet when adjacent to a public roadway.
- B. Building/storage height. A building shall not exceed a height of eighty (80) feet. Outside storage in a required yard shall not exceed ten (10) feet in height;

- C. Perimeter Treatment. The purpose of perimeter treatment, or buffering, is to provide visual barriers which block the glare of lights, signs, and structures; provide privacy and protection; and reduce or eliminate potential adverse impacts of visual or noise pollution between M-1 zoned properties and adjacent residential development. Perimeter treatment or buffering typically consists of dense landscaping, fencing, or block walls or combination of these elements. Utilities, sidewalks, and bikeways may be located within required perimeter treatment areas.
1. When abutting or facing a residential zone or residential use, refuse containers and outside storage shall be enclosed by a sight-obscuring fence or masonry wall. The fence or wall shall obstruct the containers or storage from view on the sides of the property abutting or facing a residential zone. The fence or wall shall be of such material and design as will not detract from adjacent residences, shall be free of advertising, and shall be constructed according to plans submitted by the owner or his authorized agent and approved by the Planning Director.
  2. All parking and loading areas which abut or face a residential zone or residential use, or arterial or major collector street, shall be screened by a sight-obscuring fence or vegetative screen. All other building openings which face or abut a residential use or zone shall be kept to a minimum and shall be kept closed to the maximum extent possible during business operation.
  3. A buffer yard shall be provided along all perimeters which abut a residential or commercial zone, existing residential or commercial use, or public roadway. The purpose of the buffer yard is to reduce the building scale, provide transition between contrasting uses and architectural design, and to soften, rather than block, the view of incompatible or undesirable views. At a minimum buffer yards adjacent to residential zones or uses shall be fifteen (15) feet in width, have a six (6) foot tall wood or masonry fence located along the inside edge of the yard, and landscaping to include two (2) canopy trees, four (4) evergreen trees, three (3) understory trees, twelve (12) shrubs, and groundcover for each one-hundred (100) lineal feet of perimeter. Buffer yards adjacent to commercial zones or uses shall be a minimum of ten (10) feet in width with landscaping to include one (1) canopy tree, three (3) evergreen trees, two (2) understory trees, eight (8) shrubs, and groundcover for each one-hundred (100) lineal feet of perimeter. Buffer yards adjacent to a public roadway shall be a minimum of eight (8) feet in width with landscaping to include street trees a minimum of eight (8) feet in height and two (2) inches in caliper and spaced appropriate to their species; shrubs; and groundcover. Buffer yards of less than one-hundred (100) lineal feet shall provide landscaping at a density equal to or greater than that required herein, or as may be required by the Landscape Review Committee. Maintenance of the buffer yard shall be the continuing obligation of the property owner.
- D. Off-street parking and loading (see Chapter 17.60);
- E. Clear vision (see Sections 17.54.080 A and B);
- F. Landscaping (see Chapter 17.57). (Ord. 4912 §3, 2009; Ord. 4900 §2, 2008; Ord. 4522 §1(part), 1992).

17.39.050 Environmental standards.

- A. General Requirement: Each use, activity or operation within the M-1 (Light Industrial) zone shall comply with applicable federal, state and local regulations pertaining to noise, odor, air, and water pollution.
- B. Documentation: Prior to issuance of a building permit, occupancy permit, or change of occupancy, whichever is appropriate, the Planning Director may require submission of evidence demonstrating compliance with applicable environmental regulations and necessary permits. (Ord. 4522 §1(part), 1992).

Chapter 17.42

M-2 GENERAL INDUSTRIAL ZONE

Sections:

- 17.42.010 Permitted uses.
- 17.42.020 Conditional uses.
- 17.42.030 Yard requirements.
- 17.42.040 Building height.

17.42.010 Permitted uses. In an M-2 zone, the following uses and their accessory uses are permitted:

- A. A use permitted in the M-1 zone;
- B. Manufacturing, repairing, fabricating, processing, packing, or storage uses not listed in Chapter 17.39 and which have not been declared a nuisance by statute, ordinance or any court of competent jurisdiction;
- C. Manufacture, processing, and storage of grains or fertilizer;
- D. Airport. (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.42.020 Conditional uses. In an M-2 zone, the following uses and their accessory uses may be permitted subject to the provisions of Chapter 17.74.030:

- A. Automobile wrecking yard;
- B. Day care facility;
- C. Disposal or reduction of waste materials, garbage, offal, or dead animals;
- D. Junkyard;
- E. Manufacture, use or storage of explosives;
- F. A privately owned and operated facility planned, located and laid out or modified and oriented for functional use for leisure time activities. The specific use and plan shall be enumerated at the time of application. (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.42.030 Yard requirements. Except as required in "A" and "B" below, there shall be no required yards in an M-2 zone:

- A. Side yard shall not be less than fifty feet when adjacent to a residential zone;
- B. Rear yard shall not be less than fifty feet when adjacent to a residential zone. (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

17.42.040 Building height. In an M-2 zone, a building shall not exceed a height of eighty feet. (Ord. 4128 (part), 1981; Ord. 3380 (part), 1968).

**16.31.010 - Purpose**

- A. Employment Industrial (EI) - The EI zoning district provides employment areas that are suitable for, and attractive to, key industries and industry clusters that have been identified by the State of Oregon and the City's economic development strategy as important to the state and local economy. The following are preferred industry sectors for areas zoned EI: Clean Technology; Technology and Advanced Manufacturing; and Outdoor Gear and Active Wear.

Land zoned EI shall provide for large and medium-sized parcels for industrial campuses and other industrial sites that can accommodate a variety of industrial companies and related businesses. Areas zoned EI are also intended to provide the opportunity for flex building space within small- and medium-sized industrial campuses and business parks to accommodate research and development companies, incubator/emerging technology businesses, related materials and equipment suppliers, and or spin-off companies and other businesses that derive from, or are extensions of, larger campus users and developments. Retail and commercial uses are allowed only when directly supporting area employers and employees.

Industrial establishments and support services shall not have objectionable external features and shall feature well-landscaped sites and attractive architectural design, as determined by the Hearing Authority.

- B. Light Industrial (LI) - The LI zoning district provides for the manufacturing, processing, assembling, packaging and treatment of products which have been previously prepared from raw materials. Industrial establishments shall not have objectionable external features and shall feature well-landscaped sites and attractive architectural design, as determined by the Commission.
- C. General Industrial (GI) - The GI zoning district provides for the manufacturing, processing, assembling, packaging and treatment of products from previously prepared or raw materials, providing such activities can meet and maintain minimum environmental quality standards and are situated so as not to create significant adverse effects to residential and commercial areas of the City. The minimum contiguous area of any GI zoning district shall be fifty (50) acres.

*(Ord. No. 2012-011, § 2, 8-7-2012)*

**16.31.020 - Uses**

- A. The table below identifies the land uses that are permitted outright (P), permitted conditionally (C) and not permitted (N) in the industrial zoning districts. The specific land use categories are described and defined in Chapter 16.88
- B. Uses listed in other sections of this code, but not within this specific table are prohibited.
- C. Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the commercial zones or contribute to the achievement of the objectives of the commercial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88
- D. Additional limitations for specific uses are identified in the footnotes of this table.

Uses
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<b>RESIDENTIAL</b>			
• Dwelling unit, including a manufactured home, for one (1) security person employed on the premises and their immediate family	P	P	P
<b>CIVIC</b>			
• Hospitals	C	N	N
• Police and fire stations and other emergency services	C	C	C
• Vehicle testing stations	C	C	C
• Postal services - Public	C	C	C
• Postal substations when located entirely within and incidental to a use permitted outright.	C	C	C
• Public and private utility structures, including but not limited to telephone exchanges, electric substations, gas regulator stations, treatment plants, water wells, and public work yards.	P	P	P
• Small-scale power generation facilities.	P	P	P
• Large-scale power generation facilities.	C	P	C
• Public recreational facilities including parks, trails, playfields and sports and racquet courts on publicly owned property or under power line easements	C	C	C
<b>COMMERCIAL</b>			
• Commercial Trade Schools, commercial educational services and training facilities	P	P	C
<b>Entertainment/recreation</b>			
• Country clubs, sports and racquet clubs and other similar clubs.	C	C	C
• Indoor recreation facilities such as arcades, mini-golf, or bounce house facilities <sup>2,3</sup>	C	C	C
<b>Motor Vehicle related</b>			
• Motorized vehicle and sport craft repairs and service	C	C	N
• Motorized vehicle and sport craft repair and service clearly incidental and secondary to and customarily associated with a use permitted outright or conditionally.	P	P	P
• Automotive, boat, trailer and recreational vehicle storage	C	C	N
• Vehicle fueling stations or car wash facilities <sup>4</sup>	C	C	C
• junkyards and salvage yards	N	N	N
• Manufactures home sales and display area	N	N	N
<b>Office and Professional Support services</b>			
• Business and professional offices. <sup>5</sup>	P	P	P
• Business support services such as duplicating, photocopying, mailing services, fax and computer facilities <sup>6</sup>	P	P	C
• Any incidental business, service, processing, storage or display, not otherwise permitted, that is essential to and customarily associated with a use permitted outright, provided said incidental use is conducted entirely within an enclosed building	C	C	C
<b>Childcare</b>			
• Day cares, preschools, and kindergartens, when clearly secondary to a permitted use	P	P	P
• Day cares, preschools, and kindergartens as a stand-alone use. <sup>6</sup>	C	C	C
<b>General Retail - sales oriented</b>			
• Incidental retail sales or display/showroom directly associated with a permitted use and limited to a maximum of 10 % of the total floor area of the business. <sup>7</sup>	C	C	P
• Tool and Equipment Rental and Sales, Including Truck Rental. <sup>7</sup>	P	P	P
• Retail plant nurseries and garden supply stores (excluding wholesale plant nurseries).	P	P	N
• Wholesale building material sales and service	C	P	N
• Retail building material sales and lumberyards <sup>7</sup>	C	P	N
<b>Personal Services</b>			
• Health clubs and studios less than 5,000 square feet in size.	P	P	P
• Personal services catering to daily customers where patrons pay for or receive a service rather than goods or materials, including but not limited to financial, beauty, pet grooming, and similar services. <sup>8</sup>	C	C	C
• Public or commercial parking (non- accessory)	N	N	N
• Veterinarian offices and animal hospitals.	C	C	C
• Animal boarding/Kennels and daycare facilities with outdoor recreation areas <sup>8</sup>	C	C	C
<b>Eating and Drinking establishments:</b>			

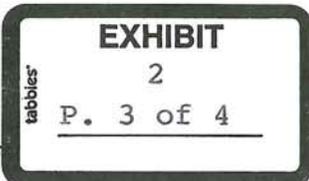
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• Restaurants, taverns, and lounges without drive-thru <sup>7</sup>	C	C	C
• Restaurants with drive-thru services	N	N	N
<b>INDUSTRIAL</b>			
• Limited manufacturing entirely within an enclosed building that is generally secondary to a permitted or conditional commercial use	P	P	P
• Medical or dental laboratories	P	P	P
• Laboratories (not medical or dental).	P	P	P
• mini-warehousing or self-storage	N	P	N
• Distribution, warehousing and storage associated with a permitted use	P	P	P
• Research and development and associated manufacturing	P	P	P
• Contractors' storage and equipment yards, building maintenance services, and similar uses.	C	P	N
• Laundry, dry cleaning, dyeing, or rug cleaning plants.	C	P	N
Manufacture, compounding, processing, assembling, packaging, treatment, fabrication, wholesaling, warehousing or storage of the following articles or products:			
• Food products, appliances, textiles and fiber products, pottery, glass and previously pulverized clay ceramics, small electronics, communication equipment, instruments, toys, novelties, electronics components, maintenance equipment, vending machines, cosmetics, chemicals and other small products and tools manufactured from previously prepared or semi-finished materials.	P	P	N
• Pharmaceuticals in facilities up to 50,000 square feet building size.	P	P	P
• Pharmaceuticals in facilities larger than 50,000 square feet building size.	N	C	N
• Building components, furniture, fixtures, signs.	P	P	N
• Non-motorized recreational vehicles and equipment.	P	P	N
• Manufactured homes, farm equipment, and greenhouses	N	P	N
• Any non-toxic materials or products made of metal, paper, wood, plastic, stone, fabric or other materials or products not otherwise permitted in the zone.	P	P	N
• Renewable energy/energy efficiency, sustainable environmental products, advanced manufacturing, high technology, biotechnology, sports apparel and other recreational products.	P	P	P
• Acids, paints, dyes, paints, soaps, ammonia, chlorine, sodium compounds, fertilizer, herbicides, insecticides and similar chemicals.	N	C	N
• Toxins or explosive materials, or any product or compound determined by a public health official to be detrimental to the health, safety and welfare of the community.	N	N	N
• Sawmills	C	C	N
• Pulp and paper mills.	N	N	N
• Distillation of oil, coal, wood or tar compounds and the creosote treatment of any products.	N	N	N
• Metal rolling and extraction mills, forge plants, smelters and blast furnaces.	N	N	N
• Meat, fish, poultry and tannery processing.	N	N	N
• Sand and gravel pits, rock crushing facilities, aggregate storage and distribution facilities or concrete or asphalt batch plants.	N	C	N
• Solid waste transfer stations.	N	C	N
• General purpose solid waste landfills, -incinerators, and other solid waste facilities.	N	N	N
• Manufacture of biomedical compounds as regulated by the U.S. Food and Drug Administration.	N	C	N
<b>WIRELESS COMMUNICATION FACILITIES</b>			
• Radio, television, and similar communication stations, including associated transmitters.	C	C	C
• Wireless communication towers <sup>9</sup> and transmitters	C	C	C
• Wireless communication facilities on City-owned property	C	C	C
• Wireless communication antennas co-located on an existing tower or on an existing building or structure not exceeding the roof of the structure	P	P	P
<b>OTHER</b>			
Agricultural uses including but not limited to:			
• Farm equipment sales and rentals	N	N	N
• Farming and horticulture	P	P	P
• Raising of animals other than household pets	N	N	N
• Truck and bus yards	N	P	N



<sup>1</sup> See special criteria for the EI zone, 16.31.030 and the Tonquin Employment Area (TEA), 16.31.040.

<sup>2</sup> If use is mixed with another, such as a restaurant, it is considered secondary to that use and permitted, provided it occupies less than fifty (50) percent of the total area.

<sup>3</sup> Limited in size to five thousand (5,000) square feet in a single outlet and no more than twenty thousand (20,000) square feet in multiple outlets in the same development project.

<sup>4</sup> Limited to Cardlock or wholesale- no public retail fuel sales.

<sup>5</sup> Limited in size to five thousand (5,000) square feet in a single outlet and no more than twenty thousand (20,000) square feet in multiple outlets in the same development project.

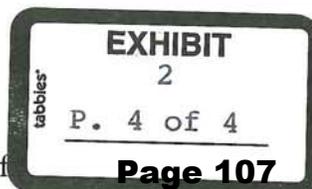
<sup>6</sup> Limited in size to five thousand (5,000) square feet in a single outlet and no more than twenty thousand (20,000) square feet in multiple outlets in the same development project.

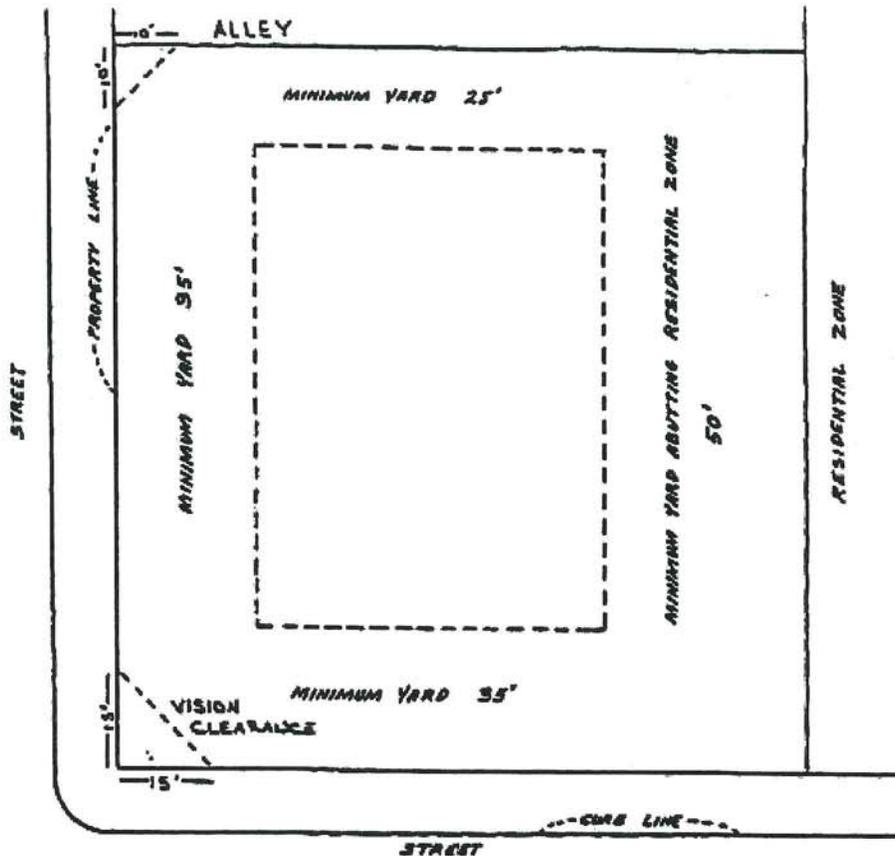
<sup>7</sup> Limited in size to five thousand (5,000) square feet in a single outlet and no more than twenty thousand (20,000) square feet in multiple outlets in the same development project.

<sup>8</sup> Animal boarding/kennels and daycare facilities entirely within an enclosed building are considered "other personal service."

<sup>9</sup> Except for towers located within one thousand (1,000) feet of the Old Town District which are prohibited.

*(Ord. No. 2012-011, § 2, 8-7-2012)*





<b>M-P INDUSTRIAL PARK ZONE</b>	
Minimum Yard Along a Street .....	35 ft.
Other Minimum Yards .....	25 ft. and/or 50 ft.
	..... if side abuts residential zone
for High Profile Buildings > 45 ft. in height:	
if adjacent to residential zones .....	1 ft./each ft. of total height
if adjacent to commercial/industrial zones .....	1 ft./each ft. > 45 ft.
Minimum Lot Size .....	none
Minimum Width at Building Line .....	none
Minimum Lot Depth .....	none
Maximum Lot Coverage .....	60 percent
Maximum Building Height .....	45 ft., excepting:
for High Profile Buildings .....	150 ft. unless:
within 100 ft. of a residential zone, then .....	45 ft. minus 1 ft. for each 2 ft. less
than 100 ft. from residential zone .....	

**Commercial Support Services :** The following uses have been interpreted by the Hillsboro Planning Commission as commercial support services within the Industrial Park (M-P) zone; as referenced in the City of Hillsboro Zoning Ordinance No. 1945, Volume 1, Section 65 (8).

- (1) Banks;
- (2) Restaurants; (Amended by INT 1-04)
- (3) Day care centers;

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- (4) Quick print shops;
- (5) Beauty salons and barber shops;
- (6) Dance, sports, and physical fitness center with a maximum floor area not exceeding 6,000 square feet;
- (7) Physical therapy clinics primarily for rehabilitation of injured workers;
- (8) Educational Facility providing tutoring service for students ages 5 through 18, restricted to 5,000 square feet or less in existing buildings;
- (9) Private Mailbox Service Center;
- (10) Private university restricted to 15,000 square feet of building space;
- (11) Executive suites hotel with restaurant and other amenities to serve industrial/business community; and,
- (12) Office supply retailer.

### **Industrial Park Zone M-P**

**Section 65. Uses Permitted Outright** . In a M-P zone the following uses and their accessory uses are permitted outright:

- (1) Dwelling for a caretaker or watchman working on the property.
- (2) Manufacturing, repairing, compounding, processing, or storage.
- (3) Office.
- (4) Public service or utility use.
- (5) Railroad tracks and facilities necessary to serve other permitted uses.
- (6) Research laboratory.
- (7) Wholesale distributor or outlet.
- (8) Commercial support services. (Amended by Ord. No. 3018/7-79.)
- (9) Offices or clinics for medicine, dentistry or other practices of the healing arts. (Added by Ord. No. 3942/8-90.)
- (10) Light Rail Facility. (Added by Ord. No. 4300/12-94.)
- (11) Customer service communications center. (Added by Ord. No. 4902/5-00.)

**Section 65A. Conditional Uses Permitted** . In a M-P zone, the following uses and their accessory uses are permitted when in accordance with Sections 78 to 83: (Added by Ord. No. 3194/12-94.)

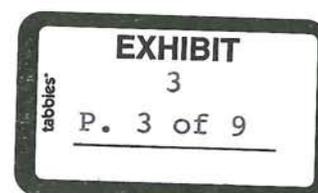
- (1) Radio transmission facilities. (Added by Ord. No. 3194/12-80.)
- (2) Commercial recreational facility. (Added by Ord. No. 3599/2-86.)
- (3) Bed and Breakfast Inn. (Added by Ord. No. 4100/10-92.)
- (4) Conference Center. (Added by Ord. No. 4100/10-92.)
- (5) Mixed Use Industrial/Commercial Development, on sites smaller than two acres, within the Station Area Interim Protection District. (Added by Ord. No. 4223/4-94.)
- (6) Church, within an existing building. (Added by Ord. No. 4232/5-94.)
- (7) Light Rail Construction Area. (Added by Ord. No. 4300/12-94.)
- (8) Transit Park and Ride. (Added by Ord. No. 4300/12-94.)
- (9) Incidental truck and trailer rental within existing storage facilities. (Added by Ord. No. 4618/10-97.)
- (10) Veterinary Clinics and Animal Hospitals excluding outside animal runs. (Added by Ord. No. 4712/10-98.)
- (11) Colleges and Universities. (Added by Ord. No. 4772/4-99.)
- (12) Card lock fueling center. (Added by Ord. No. 5036/6-01.)
- (13) Animal Services Facility, with or without overnight boarding and/or outdoor exercise area. (Added by Ord. No. 5960/3-11.)

**Section 66. Excluded Uses.** In a M-P zone, notwithstanding the provisions of Section 65, the following uses are prohibited: (Added by Ord. No. 4670/4-98.)

- (1) A use having the primary function of storing, utilizing, or manufacturing explosive materials;
- (2) Rock crushing facilities; (Added by Ord. No. 4670/4-98.)
- (3) Aggregate storage and distribution facilities; (Added by Ord. No. 4670/4-98.)
- (4) Concrete and/or asphalt batch plants. (Added by Ord. No. 4670/4-98.)

**Section 67.** (Deleted by Ord. No. 5676/10-06. See Municipal Code Chapter 11.32.)

**Section 68. Setback Requirements.** Except as provided in Section 93, in a M-P zone the yards shall be as follows:



(1) For buildings 45 feet in height or less, the yard along a street other than an alley shall be a minimum of 35 feet.

(2) For buildings 45 feet in height or less, the size of other yards shall be a minimum of 25 feet, except where the side of the lot is abutting a residential zone the yard shall be a minimum of 50 feet.

(3) For high profile industrial buildings 45 feet or more in height, front, side, and rear yard setbacks shall be as specified in sections (1) and (2) above, plus an additional setback as follows:

(a) Adjacent to residential zones, one foot for each foot of total structural height; or

(b) adjacent to commercial or industrial zones, one foot for each foot of structural height above 45 feet. (Added by Ord. No. 4096/9-92.)

**Section 69. Height of Building.** In an M-P zone, the maximum structural height shall be 45 feet, with the exception of high profile industrial buildings as defined in Section 3 of this Ordinance. The maximum structural height of a high profile industrial building shall be 150 feet. However, all industrial structures placed closer than 100 feet to a residential zone shall have a maximum height of 45 feet minus one foot for each two feet less than 100 feet from the residential district boundary. (Amended by Ord. No. 4096/9-92 and 5955/12-10.)

**Section 70. Lot Coverage.** In a M-P zone buildings shall not occupy more than 50 percent of the lot area.

**Section 71. Off-Street Parking and Loading.** In a M-P zone, in addition to the requirements of Section 84 to 86, parking or loading shall not be permitted within a required side or rear yard abutting a residential zone or within a required front yard unless the setback is increased to 75 feet and the first 20 feet from the property line are landscape.

**Section 72. Performance Standards.** In a M-P zone no land or structure shall be used or occupied unless there is continuing compliance with the following standards:

(1) **Air Quality and Noise .** All uses and operations shall comply with current state air quality and noise statutes and rules, as administered by the Department of Environmental Quality. (Amended by Ord. No. 3343/7-82.)

(2) (Deleted by Ord. No. 3343/7-82.)

(3) (Deleted by Ord. No. 3343/7-82.)

(4) (Deleted by Ord. No. 3343/7-82.)

(5) **Heat and glare.**

(a) Except for exterior lighting, operations producing heat or glare shall be conducted entirely within an enclosed building.

(b) Exterior lighting shall be directed away from adjacent properties.

(6) **Insects and rodents.** Materials including wastes shall be stored, and grounds shall be maintained in a manner that will not attract or aid the propagation of insects or rodents or create a health hazard.

(7) **Materials and equipment storage.** The open storage of materials and equipment is permitted only under the following conditions:

- (a) The storage must be in an area contained by a sight-obscuring fence at least six feet high, but no more than 10 feet high.
- (b) Other standards of this Section apply.

(8) **Boundary fences.** Fences will be allowed inside of a boundary planting screen and where it is necessary to protect property of the industry concerned or to protect the public from a dangerous condition with the following provisions:

- (a) No fence shall be constructed in the required setback from a public right-of-way.
- (b) Fences shall be of open wire mesh or similar open construction.

(9) **Vehicular access.**

- (a) Access points to an industrial site from a street shall be located to minimize traffic congestion and, to the extent possible, to avoid directing traffic into residential areas, all as approved by the Planning Commission.
- (b) Where possible within industrial districts, access to the street shall be made to serve more than one industrial site.

(10) **Landscaping.**

- (a) Properties abutting a residential Comprehensive Plan Land Use Map designation boundary shall provide and maintain a dense evergreen landscape buffer and such other screening measures as may be prescribed by the Planning Director in the event differences in elevation should defeat the purpose of this requirement. (Amended by Ord. No. 5955/12-10)
- (b) Yards adjacent to streets and those abutting a residential Comprehensive Plan Land Use Map designation boundary shall be continuously maintained in lawn, with lawn and trees or shrubs established and maintained in a manner providing a park-like character to the property. (Amended by Ord. No. 5955/12-10)
- (c) Other yards and unused property shall be maintained in grass or other suitable ground cover.
- (d) Sites of high profile industrial buildings shall have enhanced evergreen landscaping buffers and earthen berms as necessary to mitigate the increased visual impact of the taller building(s). The height and/or screening intensity of the landscaping and berms shall be determined in relation to the proximity

**EXHIBIT**

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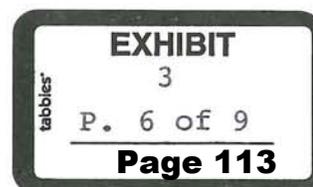
of the high profile building(s) to a public street or an adjacent non-Industrial Comprehensive Plan Land Use Map designation boundary. (Added by Ord. No. 5955/12-10)

**Section 73.** (Deleted by Ord. No. 3543/6-85.)

**Section 74. Administration and Enforcement.**

(1) Records. In an M-P zone as a condition for the granting of a building permit, it shall be agreed that, upon request of the city, information sufficient to determine the degree of compliance with the standards in Section 72 shall be furnished by the industry. Such requests may include a requirement for continuous records of operation likely to violate the standards, for periodic checks to assure maintenance of standards, or for special surveys in the event a question arises as to compliance.

(2) (Deleted by Ord. No. 3110/4-80.)





<b>M-2 INDUSTRIAL ZONE</b>	
Minimum Front and Side Yards.....	1 Foot if abutting public street or alley
Minimum Rear Yard.....	none
Minimum Lot Size.....	none
Minimum Width at Building Line.....	none
Minimum Lot Depth.....	none
Maximum Lot Coverage.....	none
Maximum Building Height.....	none

**Industrial Zone M-2**

**Section 60. Uses Permitted Outright.** In a M-2 zone, the following uses and their accessory uses are permitted outright:

- (1) A use permitted outright in a C-1 Zone, excluding mobile home parks and major retail use. (Amended by Ord. Nos. 2386/10-70 and 5050/8-01.)

**EXHIBIT**

3

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- (2) Manufacturing, repairing, compounding, processing, or storage.
- (3) Dwelling for a caretaker or watchman working on the property.
- (4) (Deleted by Ord. No. 2910/6-78.)
- (5) Railroad tracks and facilities such as switching yards, spur or holding tracks, freight depots.
- (6) Wholesale distributor or outlet.
- (7) Light Rail Construction Area. (Added by Ord. No. 4300/12-94.)
- (8) Transit Park and Ride. (Added by Ord. No. 4300/12-94.)
- (9) Animal Services Facility including overnight boarding, but excluding outdoor exercise areas except as provided in Section 61. (Added by Ord. No. 5960/3-11.)

**Section 61. Conditional Uses Permitted**. In a M-2 Zone the following uses and their accessory uses are permitted when in accordance with Section 78 to 83:

- (1) Junk yard.
- (2) Motor vehicle wrecking yard.
- (3) (Deleted by Ord. No. 3029/8-79.)
- (4) Automobile service station. (Added by Ord. No. 2526/8-72.)
- (5) Corrections Facilities including, but not limited to, jails, half-way houses, probation center, and restitution centers. (Added by Ord. No. 2910/6-78.)
- (6) Radio transmission facilities. (Added by Ord. No. 3194/12-80.)
- (7) Child Care Facility. (Added by Ord. No. 3280/11-81 and Amended by Ord. No. 5168/7-02.)
- (8) Recreation Vehicle Parks. (Added by Ord. No. 3609/4-86.)
- (9) School: junior high or senior high, college or university. (Added by Ord. No. 3775/8-88.)
- (10) Car Wash Facilities. (Added by Ord. No. 5106/2-02.)
- (11) Outdoor exercise areas accessory to animal services facilities. (Added by Ord. No. 5960/3-11.)

**Section 62. Limitations on Use**. In a M-2 Zone the following conditions and limitations shall apply:

(1) A use having the primary function of storing, utilizing or manufacturing explosive materials is prohibited.

(2) (Deleted by Ord. No. 3343/7-82.)

(3) Materials including wastes shall be stored and grounds shall be maintained in a manner which will not attract or aid the propagation of insects or rodents or create a health hazard.

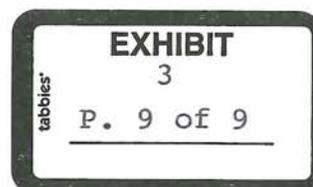
(4) Any use or operation shall comply with current state air quality and noise statutes and rules, as administered by the Department of Environmental Quality. (Added by Ord. No. 3343/7-82.)

**Section 62A. Setback Requirements** . The front yard and any side yard abutting upon a public street or alley shall be a minimum of one foot. (Added by Ord. No. 2497/3-72.)

**Section 63.** (Deleted by Ord. No. 2670/9-74.)

**Section 64.** (Deleted by Ord. No. 2670/9-74.)

**Section 64A.** (Deleted by Ord. No. 2670/9-74.)



Chapter 18.530  
INDUSTRIAL ZONING DISTRICTS

Sections:

- 18.530.010 Purpose
- 18.530.020 List of Zoning Districts
- 18.530.030 Uses
- 18.530.040 Development Standards
- 18.530.050 Additional Development Standards

18.530.010 Purpose

- A. Provide range of industrial services for City residents. One of the major purposes of the regulations governing development in industrial zoning districts is to ensure that a full range of job opportunities are available throughout the City so that residents can work close to home if they choose. The location of land within each industrial district must be carefully selected and design and development standards created to minimize the potential adverse impacts of industrial activity on established residential areas.
- B. Facilitate economic goals. Another purpose of these regulations is to ensure that there is a full range of economic activities and job opportunities within the City limits, in compliance with the economic goals of the City of Tigard Comprehensive Plan.

18.530.020 List of Zoning Districts

- A. I-P: Industrial Park District. The I-P zoning district provides appropriate locations for combining light manufacturing, office and small-scale commercial uses, e.g., restaurants, personal services and fitness centers, in a campus-like setting. Only those light industrial uses with no off-site impacts, e.g., noise, glare, odor, vibration, are permitted in the I-P zone. In addition to mandatory site development review, design and development standards in the I-P zone have been adopted to insure that developments will be well-integrated, attractively landscaped, and pedestrian-friendly.
- B. I-L: Light Industrial District. The I-L zoning district provides appropriate locations for general industrial uses including industrial service, manufacturing and production, research and development, warehousing and freight movement, and wholesale sales activities with few, if any, nuisance characteristics such as noise, glare, odor, and vibration.
- C. I-H: Heavy Industrial District. The I-H zoning district provides appropriate locations for intensive industrial uses including industrial service, manufacturing and production, research and development, warehousing and freight movement, railroad yards, waste-related and wholesale sales activities. Activities in the I-H zone include those which involve the use of raw materials, require significant outdoor storage and generate heavy truck and/or rail traffic. Because of these characteristics, I-H-zoned property has been carefully located to minimize impacts on established residential, commercial and light industrial areas.

18.530.030 Uses

- A. Types of uses. For the purposes of this chapter, there are four kinds of use:

**Ordinance No. 2013-2763 RCA Attachment "5"**

1. A permitted (P) use is a use which is permitted outright, but subject to all of the applicable provisions of this title. If a use is not listed as a permitted use, it may be held to be a similar unlisted use under the provisions of Chapter 18.230;
  2. A restricted (R) use is permitted outright providing it is in compliance with special requirements, exceptions or restrictions;
  3. A conditional use (C) is a use the approval of which is at the discretion of the Hearings Officer. The approval process and criteria are set forth in Chapters 18.310 and 18.320. If a use is not listed as a conditional use, it may be held to be a similar unlisted use under the provisions of Chapter 18.230;
  4. A prohibited (N) use is one which is not permitted in a zoning district under any circumstances.
- B. Use table. A list of permitted, restricted, conditional and prohibited uses in industrial zones is presented in Table 18.530.1.
- C. Accessory structures.
1. Accessory structures are permitted in all industrial zones providing the site is still in compliance with all development standards, including but not limited to setbacks, height, lot coverage and landscaping requirements, of the base zone. All accessory structures shall comply with all requirements of the State Building Code. All accessory structures except those less than 120 square feet in size require a building permit.
  2. All freestanding and detached towers, antennas, wind-generating devices and TV receiving dishes, except as otherwise regulated by Wireless Communication Facilities (Chapter 18.798), shall have setbacks equal to or greater than the height of the proposed structure. Suitable protective anti-climb fencing and a landscaped planting screen, in accordance with Chapter 18.745, Landscaping and Screening, shall be provided and maintained around these structures and accessory attachments.

TABLE 18.530.1  
USE TABLE: INDUSTRIAL ZONES

USE CATEGORY	I-P	I-L	I-H
<b>RESIDENTIAL</b>			
Household Living	R <sup>1</sup>	R <sup>1</sup>	R <sup>1</sup>
Group Living	N	N	N
Transitional Housing	N	N	N
Home Occupation	N	N	N
<b>CIVIC (INSTITUTIONAL)</b>			
Basic Utilities	C <sup>14</sup>	C <sup>14</sup>	P
Colleges	N	N	N
Community Recreation	C <sup>10</sup>	C <sup>10</sup>	C <sup>10</sup>
Cultural Institutions	N	N	N
Day Care	R <sup>3,9</sup>	R <sup>3,9</sup>	R <sup>3,9</sup>
Emergency Services	P	P	P
Medical Centers	N	N	N
Postal Service	P	P	P
Public Support Facilities	P	P	P
Religious Institutions	N	N	N
Schools	N	N	N
Social/Fraternal Clubs/Lodges	N	N	N
<b>COMMERCIAL</b>			
Commercial Lodging	P	N	N
Custom Arts and Crafts	N	N	N
Eating and Drinking Establishments	R <sup>2</sup>	N	N
Major Event Entertainment	N	N	N
Outdoor Entertainment	P	N	N
Indoor Entertainment	P	N	N
Adult Entertainment	N	N	N
Sales-Oriented	R <sup>2</sup>	N	N
Personal Services	R <sup>2</sup>	N	N
Repair-Oriented	P	N	N
Bulk Sales	R <sup>4,11</sup>	N	N
Outdoor Sales	N	P	P
Animal-Related	P	P	P
Motor Vehicle Sales/Rental	R <sup>4,12,13</sup>	P	P
Motor Vehicle Servicing/Repair	C	P	P
Vehicle Fuel Sales	P	P/C <sup>7</sup>	P
Office	P	N	N
Self-Service Storage	P	P	P
Non-Accessory Parking	P	P	P

TABLE 18.530.1 (CON'T)

USE CATEGORY	I-P	I-L	I-H
<b>INDUSTRIAL</b>			
Industrial Services	N	P	P
Light Industrial	P	P	P
General Industrial	N	P	P
Heavy Industrial	N	N	P
Railroad Yards	N	N	P
Research and Development	P	P	P
Warehouse/Freight Movement	N	P	P
Waste-Related	N	N	P
Wholesale Sales	R <sup>4</sup>	P	P
<b>OTHER</b>			
Agriculture/Horticulture	P <sup>5</sup>	P <sup>5</sup>	P <sup>5</sup>
Cemeteries	N	C	N
Detention Facilities	C	N	C
Heliports	C	C	C
Mining	N	N	P
Wireless Communication Facilities	P/R <sup>6</sup>	P	P
Rail Lines/Utility Corridors	P	P	P
Other	NA	NA	P <sup>8</sup>

P=Permitted      R=Restricted      C=Conditional Use      N=Not Permitted

- <sup>1</sup> A single-family detached dwelling or single-family mobile or manufactured home allowed for caretaker or kennel owner/operator when located on the same lot as the permitted use and is exclusively occupied by the caretaker or kennel owner/operator and family.
- <sup>2</sup> These limited uses, separately or in combination, may not exceed 20% of the entire square footage within a development complex. No retail uses shall exceed 60,000 square feet of gross leasable area per building or business.
- <sup>3</sup> In-home day care which meets all state requirements permitted by right.
- <sup>4</sup> Permitted if all activities, except employee and customer parking, are wholly contained within a building(s).
- <sup>5</sup> When an agricultural use is adjacent to a residential use, no poultry or livestock, other than normal household pets, may be housed or provided use of a fenced run within 100 feet of any nearby residence except a dwelling on the same lot.
- <sup>6</sup> See Chapter 18.798, Wireless Communication Facilities, for definition of permitted and restricted facilities in the I-P zone.
- <sup>7</sup> Vehicle fuel sales permitted outright unless in combination with convenience sales, in which case it is permitted conditionally.
- <sup>8</sup> Explosive storage permitted outright subject to regulations of Uniform Fire Code.

- <sup>9</sup> Day care uses with over five children are permitted subject to an Environmental Impact Assessment in accordance with Section 18.530.050.C.1. The design of the day care must fully comply with State of Oregon requirements for outdoor openspace setbacks.
- <sup>10</sup> Limited to outdoor recreation on (1) land classified as floodplain on City flood maps, when the recreational use does not otherwise preclude future cut and fill as needed in order to develop adjoining industrially zoned upland; and (2) land located outside the floodplain as shown on City flood maps, when the recreation use is temporary and does not otherwise preclude allowed uses or conditional uses other than recreation within the district.
- <sup>11</sup> These limited uses, shall only be allowed in IP zoned property east of SW 72<sup>nd</sup> Avenue. These uses, separately or in combination shall not exceed 60,000 square feet of gross leasable area in a single building, or commercial retail uses with a total of more than 60,000 square feet of retail sales area on a single lot or parcel, or on contiguous lots or parcels, including those separated only by transportation right-of-way.
- <sup>12</sup> These limited uses, separately or in combination, may not exceed 10,000 square feet/lot.
- <sup>13</sup> This use limited to boat sales/rental only.
- <sup>14</sup> Except water and storm and sanitary sewers, which are allowed by right.

(Ord. 10-15 § 1; Ord. 09-13; Ord. 09-01 §1; Ord. 04-14)

**18.530.040 Development Standards**

A. Compliance required. All development must comply with:

1. All of the applicable development standards contained in the underlying zoning district, except where the applicant has obtained variances or adjustments in accordance with Chapters 18.370.
2. All other applicable standards and requirements contained in this title.

B. Development standards. Development standards in industrial zoning districts are contained in Table 18.530.2 below:

**TABLE 18.530.2  
DEVELOPMENT STANDARDS IN INDUSTRIAL ZONES**

<b>STANDARD</b>	<b>I-P</b>	<b>I-L</b>	<b>I-H</b>
Minimum Lot Size	None	None	None
Minimum Lot Width	50 ft.	50 ft.	50 ft.
Minimum Setbacks			
- Front yard	35 ft.	30 ft.	30 ft.
- Side facing street on corner & through lots [1]	20 ft.	20 ft.	20 ft.
- Side yard	0/50 ft. [3]	0/50 ft. [3]	0/50 ft. [3]
- Rear yard	0/50 ft. [3][4]	0/50 ft. [3]	0/50 ft. [3]
- Distance between front of garage & property line abutting a public or private street	--	--	--
Maximum Height	45 ft.	45 ft.	45 ft.
Maximum Site Coverage [2]	75 % [5]	85 %	85 %
Minimum Landscape Requirement	25 % [6]	15 %	15%

[1] The provisions of Chapter 18.795 (Vision Clearance) must be satisfied.

[2] Includes all buildings and impervious surfaces.

[3] No setback shall be required except 50 feet shall be required where the zone abuts a residential zoning district.

[4] Development in industrial zones abutting the Rolling Hills neighborhood shall comply with Policy 11.5.1.

[5] Maximum site coverage may be increased to 80% if the provisions of Section 18.530.050.B are satisfied.

[6] Except that a reduction to 20% of the site may be approved through the site development review process.

I-P - Industrial Park District I-L - Light Industrial I-H - Heavy Industrial
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**18.530.050 Additional Development Standards**

A. Commercial lodging in the I-P zone. The following development standards shall apply for a commercial lodging facility located in the I-P zone:

1. Site size shall be a minimum of two acres and a maximum of five acres.
2. The site shall have access to be approved by the City Engineer to an arterial or collector street with capacity sufficient to ensure that adequate access to local businesses is maintained.
3. Ancillary uses, also permitted in the I-P zone as contained in Chapter 18.530 shall be allowed as integral elements of the commercial lodging development, provided they comprise no more than 20% of total floor area.
4. Signage shall conform to Chapter 18.780.

**Ordinance No. 2013-2763 RCA Attachment "5"**

- B. Reduction of lot coverage requirements. Lot coverage may be increased from 75% to 80% as part of the site development review process, providing the following requirements are satisfied:
1. The minimum landscaping requirement shall be 20% of the site.
  2. The applicant shall meet the following performance standards with regard to the landscaping plan approved as part of the site development review process:
    - a. Street trees, as required by Section 18.745.040.C.1 are to be installed with a minimum caliper of three inches rather than the two inches as measured at four feet in height;
    - b. The landscaping between a parking lot and street property line shall have a minimum width of 10 feet;
    - c. All applicable buffering, screening and setback requirements contained in Section 18.745.050 shall be satisfied;
    - d. The applicant shall provide documentation of an adequate on-going maintenance program to ensure appropriate irrigation and maintenance of the landscape area.
- C. Day care uses. The following standards shall apply for all commercial day care uses in industrial zones:
1. The Environmental Impact Assessment must document noise, visible emissions, vibration, odor, glare and heat from uses within one quarter mile. A plan and program for day care facilities to provide mitigation on-site for any of the above off-site impacts must be provided. Sound attenuation walls, screening, window covering, shades, and other such means are appropriate means of mitigation and may be attached as conditions of approval.
  2. The State of Oregon Child Care Division Certification Section shall be notified of the proposed site plans prior to submitting an application to insure that the plans submitted generally address the permitting requirements.
  3. Prior to occupancy of the proposed day care, evidence of certification through the State of Oregon Child Care Division shall be provided. (Ord. 02-33) ■



## ORDINANCE NO. 2013-2763

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**AN ORDINANCE AMENDING THE NEWBERG MUNICIPAL CODE  
ADOPTING A NEW ZONING USE TABLE**

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### RECITALS:

1. Newberg has had a zoning ordinance since the 1950s. The list of uses allowed in each zone is in need of update to reflect current uses, to better organize the uses, and to comply with several state laws.
2. The Newberg Planning Commission has recommended changes to modernize the zoning lists.
3. Organizing the uses into a single table would make the Development Code more useful by showing exactly which zones particular uses are allowed in.
4. Replacing the long lists of individual allowed uses with more general categories will help modernize the code and help to categorize uses that may not fit into a specific use definition.

### THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. The Newberg Municipal Code is amended and attached as Exhibit "A," which is hereby adopted and by this reference incorporated.
2. The findings attached as Exhibit "B" are hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: September 18, 2013.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 19<sup>th</sup> day of August, 2013, by the following votes: **AYE:**      **NAY:**      **ABSENT:**      **ABSTAIN:**

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Norma I. Alley, MMC, City Recorder

**ATTEST** by the Mayor this 22<sup>nd</sup> day of August, 2013.

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Bob Andrews, Mayor

## Newberg Zoning Use Table Development Code Amendments

**Note:** Added text is shown in double underline  
Removed text is shown in ~~strikeout~~.

*Comments not part of the code are shown italicized in a box*

**SECTION 1: Repeal. The following sections of the Newberg Development Code shall be removed.**

15.225.070 Conditional uses permitted in any zoning district.

15.304 R-1 Low Density Residential District

15.306 R-2 Medium Density Residential District

15.308 R-3 High Density Residential District

15.309 R-4 Manufactured Dwelling District

15.310 RP Residential-Professional District

15.312 C-1 Neighborhood Commercial District

15.314 C-2 Community Commercial District

15.316 C-3 Central Business District

15.318 C-4 Riverfront Commercial District

15.320 M-1 Limited Industrial District

15.322 M-2 Light Industrial District

15.324 M-3 Heavy Industrial District

15.325 M-4 Large Lot Industrial District

15.328 I Institutional District

15.330 CF Community Facilities District

**SECTION 2: Definitions. The definitions in Newberg Development Code 15.05.030 shall be amended as follows:**

~~**Apartment House.** See “dwelling, multiple.”~~

“Assisted living facility” means a building, complex, or distinct part thereof, licensed as such by the State of Oregon, consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents. Assisted living facilities are considered a type of multifamily dwelling.

“**Accessory building**” means any detached subordinate building the use of which is incidental, appropriate, and subordinate to that of the main building and separated from the main building by at least five feet. Buildings less than five feet from the main building shall be considered to be attached to the main building.

“**Accessory use**” means a use incidental and accessory to the primary use of the lot or a building located on the same lot.

“**Airport**” means a facility, either on land or water, where aircraft can take off and land, typically including hard-surfaced landing strips, a control tower, hangars, and accommodations for passengers and cargo.

“**Basic utilities**” means utilities that serve the needs of land uses in the immediate vicinity including wastewater and water lines, wastewater or water pump stations, water reservoirs, storm drains, stormwater retention or detention facilities, electric service substations, natural gas transmission lines, electric, telephone, and cable lines, and solar panels.

~~“**Bed and breakfast establishment**” means a structure designed and occupied as a residence in which sleeping rooms are provided on a daily or a weekly basis for use by travelers or transients for a charge or fee paid or to be paid for the rental or use of the facility.~~

“**Bed and breakfast establishment**” means a structure designed as a single-family dwelling and occupied by an on-site manager in which sleeping units are provided for periods of less than 30 days for use by travelers or transients for a charge or fee paid or to be paid for the rental or use of the facility.

**Caretaker dwelling.** See “Dwelling, caretaker.”

~~“**Cemetery**” means land used or intended to be used for purposes including columbaria, crematories, mausoleums, and mortuaries, when operated in conjunction with and within the boundary of such cemetery.~~

“**Cemetery**” means a place:

1. Dedicated to and used, or intended to be used, for a permanent memorial or the permanent interment of human remains; and
2. That may contain a mausoleum, crypt or vault interment, a columbarium, an ossuary, a cenotaph, a scattering garden, any other structure or place used or intended to be used for the interment or disposition of human remains or any combination of these structures or places.

~~“Clinic” means single or multiple offices for physicians, surgeons, dentists, chiropractors, osteopaths and other members of the healing arts, including a dispensary in each such building to handle only merchandise customarily prescribed by occupants in connection with their practices.~~

“College category” means a category of uses under NMC Chapter 15.303 that includes public and private schools that provide post-secondary education primarily for adults, usually working toward a degree or certificate.

“Community services category” means a category of uses under NMC Chapter 15.303 that are of a public, nonprofit, or charitable nature generally providing a local service to people of the community. Generally, they provide the service on the site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any time (for instance, any senior citizen could join a senior center). The use may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

“Commercial educational services category” means a category of uses under NMC Chapter 15.303 that includes educational services conducted in an office or studio setting and generally focusing on serving students with supplemental education, enrichment, and/or tutoring, where a fee is usually charged for services.

“Commercial recreation – indoor category” means a category of uses under NMC Chapter 15.303 that provide entertainment, recreation, and fitness activities for spectator or participants, within buildings. Fees usually are charged for admission or participation.

“Commercial recreation – outdoor category” means a category of uses under NMC Chapter 15.303 that provide entertainment, recreation, and fitness activities for spectators or participants outdoors. Fees usually are charged for admission or participation.

“Commercial recreation – motor vehicle related category” means a category of uses under NMC Chapter 15.303 that provide entertainment or recreation with motorized vehicles for spectators and/or participants.

“Commercial services category” means a category of uses under NMC Chapter 15.303 that provide services to the general public for compensation. Customers typically come to the site to receive the service. Items that are brought in and serviced are predominantly small, hand carried items. Outdoor storage of materials on site is

limited to small (under 400 square feet), fenced and screened areas. The establishments use passenger or light duty vehicles at the site; larger vehicles rarely visit the site. Operators may include government or non-profit organizations.

**“Commercial vehicle services category”** means a category of uses under NMC Chapter 15.303 that repair and service passenger vehicles, light duty vehicles and recreational vehicles for the general public. This includes fueling and washing services.

~~“Conference center” means a building or group of buildings operated primarily for the accommodation of people engaged in a group study project which may be known as “symposium,” “seminary,” “conference,” “workshop,” or “short course” and which may have such incidental uses as those customarily found in hotels to serve those engaged in such a project. Rentals of living accommodations within the building may be made available independent of any group study project.~~

**“Data center”** means a facility used to house computer systems and associated components, such as telecommunications and storage systems. Data centers are in the warehouse, storage, and distribution use category.

**“Day care category”** means a use category under NMC Chapter 15.303 that includes the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, during a part of the 24 hours of the day, with or without compensation. It also may include care or supervision of an adult during part of the 24 hours of the day where lodging is not provided.

~~“Day nursery” means an institution, establishment or place in which children are given board, care or training apart from their parents or guardians for compensation or reward, consistent with Oregon Department of Human Resources standards for day care facilities.~~

**“Dormitory”** means a living organization housing six or more unrelated people who share a common kitchen either on the site or elsewhere.

**“Dwelling-unit, accessory”** means one or more rooms with private bath and kitchen facilities comprising an independent, self-contained dwelling unit within or attached to an existing or new single-family dwelling.

**“Dwelling, caretaker”** means a dwelling provided on an industrial site for an employee or owner to provide around the clock surveillance or service for the industry.

**“Dwelling, single-family”** means a detached building designed or used exclusively for the occupancy of one family and having housekeeping facilities for only one family.

**“Dwelling-unit, single-family attached”** means a single-family dwelling having one or more walls attached to and in common with one or more single-family dwellings, with each dwelling unit on a separate lot or parcel.

“**Dwelling, mixed use**” means a dwelling on a lot that has separate non-residential uses on the same lot, such as an apartment provided on a second floor of a commercial building. “Mixed-use dwelling” excludes a caretaker dwelling.

“**Dwelling, multiple family/multifamily**” means a building designed and used for occupancy by three or more families, all living independently of each other, and having separate housekeeping facilities for each family. “**Dwelling, multifamily**” includes assisted living facilities.

“**Dwelling, single-family detached**” means a detached building designed or used exclusively for the occupancy of one family and having housekeeping facilities for only one family.

“**Dwelling, two-family (duplex)**” means a building designed or used exclusively for the occupancy of two families living independently of each other and having separate housekeeping facilities for each family.

“**Emergency services category**” means a category of uses under NMC Chapter 15.303 that with personnel or equipment staged for quick response in case of emergency. The facility is operated by a public agency or private franchise agency.

“**Family child care home**” means a registered or certified family child care home under the laws of the State of Oregon. A registered family child care home generally provides care for a maximum of 10 children in the family living quarters of the provider’s home. A certified family care home is located in a building constructed as a single-family dwelling and has a certificate to care for a maximum of 16 children at any one time.

“**Garage, repair**” means a building used for the care and repair of motor vehicles, including major and minor work such as body and fender work or engine and transmission overhaul, and incidental storage or parking of vehicles.

“**Golf course**” means a large outdoor tract of land laid out for playing golf. “Golf course” may include a golf driving range or golf pro shop as accessory uses. “Golf course” excludes a miniature golf course.

“**Group care facility**” means an institution that maintains facilities for rendering of board and domiciliary care for compensation to physically, mentally or socially disabled persons or delinquent or dependent persons. Assisted living facilities are considered group care facilities. Group care facilities provide care for six to 15 individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents.

“**Group care facility category**” means a use category under NMC Chapter 15.303 that includes licensed facilities that provide residential care alone or in conjunction with treatment or training or a combination thereof for sixteen or more individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

~~“Group care home” means any dwelling unit maintained, licensed and operated for the care alone or in conjunction with treatment or training or a combination of treatment or training for physically, mentally or socially disabled persons or delinquent or dependent persons, by any person who is not the parent or guardian of and who is not related by blood, marriage or legal adoption to such persons. Group care homes shall provide care for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of home residents and need not be related to each other or to home residents. Consistent with the Fair Housing Act, group care homes which provide housing for disabled persons, including the aged, occupying a structure as one housekeeping unit shall be considered a single-family use with densities governed by adopted city building codes.~~

~~“Heavy manufacturing” means a use that involves manufacturing, processing, fabrication, packaging, or assembly of large volumes of raw materials into refined products. These types of firms have significant external impacts. Outdoor storage and processing of goods and materials may exceed 10 percent of the site. Transportation needs are often met by both truck and rail. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).~~

“Heavy manufacturing category” means a category of uses under NMC Chapter 15.303 that involve manufacturing, processing, fabrication, packaging, or assembly of large volumes of raw materials into refined products. These types of firms have significant external impacts. Outdoor storage and processing of goods and materials may exceed 10 percent of the site. Transportation needs are often met by both truck and rail. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).

“Helipad” means a transportation structure or area used for the landing and ascending of a helicopter, typically associated with a single use, such as a hospital.

“Heliport” means a facility used for the landing and ascending of helicopters, typically with a control tower, hangars, and accommodations for passengers and cargo.

“Home gardening” means the cultivation of flowers, fruits, vegetables, or ornamental plants for personal use of the owner or tenants of a lot. “Home gardening” includes community gardens where the space is provided without charge for the space to individuals to raise produce for their personal use, or for non-profit groups to raise produce to donate to individuals or charitable organizations.

“Home livestock and poultry raising” means the keeping and raising of livestock or poultry for the personal use of the owner or tenants of the lot.

“Home occupation” means an occupation or profession carried on by a member of the family residing on the premises.

“Horticulture” means the cultivation of a garden, orchard, or nursery, or the cultivation of flowers, fruits, vegetables, or ornamental plants for commercial purposes. It excludes farm stands or other on-site retail sale of the products.

~~“Hospitals” means institutions devoted primarily to the rendering of healing, curing and/or nursing care, which maintain and operate facilities for the diagnosis, treatment and care of two or more nonrelated individuals suffering from illness, injury or deformity or where obstetrical or other healing, curing and/or nursing care is rendered over a period exceeding 24 hours.~~

“Hospital category” means a use category under NMC Chapter 15.303 that includes medical institutions that provide medical and surgical care to patients on an inpatient or emergency basis, which may be in addition to outpatient care.

~~“Hotel,” “motel,” “motor hotel,” or “tourist court” means a building or group of buildings used for transient residential purposes containing six or more guest rooms without housekeeping facilities (not including kitchenettes) which are designed to be used, or which are used, rented or hired out for sleeping purposes.~~

“Hotel” or “motel” means a structure with sleeping units or dwelling units rented or occupied for periods of less than 30 days, excluding vacation rental homes and bed and breakfast establishments.

~~“Industrial service” means a use that involves repairing or servicing of industrial, business or consumer machinery, equipment, products or by-products. Few customers, especially the general public, come to the site (typically fewer than five per day per 1,000 square feet of floor area). Examples include welding shops; machine shops; towing and vehicle storage; auto and truck salvage and wrecking; heavy truck servicing and repair; building contractors; printing; exterminators; recycling operations; janitorial and building maintenance services; research and development laboratories; and photofinishing laboratories. This does not include truck stops.~~

“Industrial services category” means a category of uses under NMC Chapter 15.303 that provide services to other businesses or industries. Services often are provided off site at the customer location. Services to the general public are allowed, but general public visits to the site are infrequent. Items to be serviced may be brought in and out by truck, trailer or forklift. Materials may be stored in warehouses, or outside in enclosed areas. Trailers and medium or heavy duty vehicles may be used and stored on site.

~~“Kennel” means a lot or premises on which three or more adult dogs are kept, whether by owners of the dogs or by persons providing facilities and care, whether or not for compensation. An “adult dog” is one that has reached the age of four months.~~

“Kennel, commercial” means a lot or premises for the boarding, training, or breeding of dogs or cats for compensation, and where four or more of such adult animals are kept. An adult dog or cat is one that has reached the age of six months. “Commercial kennel” excludes pounds, pet stores (general retail sales), small animal hospitals, and hobby kennels.

**“Kennel, hobby”** means an accessory use to a single-family dwelling unit where four or more adult dogs are kept by the resident for their own use and enjoyment without compensation. An adult dog is one that has reached the age of six months.

**“Landing field”** means a facility, either on land or water, where aircraft can take off and land, typically excluding hard surfacing, control towers, hangars, or accommodations for passengers and cargo. See also **“airport.”**

**~~“Light manufacturing”~~** means a use that involves manufacturing, processing, fabrication, packaging, or assembly of goods. ~~These types of firms are involved in the secondary processing and assembly of materials and components into finished products, generally for the wholesale market, for transfer to other plants, or to order for firms or consumers. The external impact from these uses is generally less than heavy manufacturing. Outdoor storage and processing of goods and materials is less than 10 percent of the site. Transportation needs are often met by truck. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).~~

**“Light manufacturing category”** means a category of uses under NMC Chapter 15.303 that involves manufacturing, processing, fabrication, packaging, or assembly of goods. These types of firms are involved in the secondary processing and assembly of materials and components into finished products, generally for the wholesale market, for transfer to other plants, or to order for firms or consumers. The external impact from these uses is generally less than heavy manufacturing. Outdoor storage and processing of goods and materials is less than 10 percent of the site. Transportation needs are often met by truck. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).

**“Livestock and poultry farming”** means the keeping and raising of livestock or poultry for commercial purposes.

**“Local business office category”** means a category of office uses under NMC Chapter 15.303 that serve the local area. General public visits to the office may be frequent. There is little or no outdoor storage of equipment and materials. Vehicles regularly on site are limited to passenger and light duty vehicles. No manufacturing occurs on site. Materials on site are mostly hand carried.

**“Manufactured dwelling park”** means any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person. **“Manufactured dwelling park”** does not include a manufactured home subdivision.

**“Manufactured home”** means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction.

**“Manufactured home subdivision”** means a subdivision where the use of lots is limited to one manufactured home per lot or uses accessory to the home or the subdivision.

**“Marina”** means a boat basin offering dockage and other service for small watercraft, including marine gas facilities, boat launching, and moorage.

**“Medical office category”** means a category of uses under NMC Chapter 15.303 that provide medical or surgical care to patients within the office. Care is provided by or under the direction of a government licensed medical practitioner. Services are provided on an outpatient basis only. Regular office hours are during the day with only occasional night time emergency care.

**“Mobile home park”** means any place where four or more manufactured structures are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person.

**“Open space category”** means a category of uses under NMC Chapter 15.303 that provide outdoor space for natural feature preservation, or for walking, sitting, watching, or observing. Most of the area is left in native vegetation. Open spaces may be publicly or privately owned, and public access may be restricted or prohibited.

**“Park category”** means a category of uses under NMC Chapter 15.303 that provide areas for outdoor recreation, whether passive or active. Parks may be privately or publicly operated, but no admission fee is charged.

**“Parking facility”** means parking spaces that are not designated for use by those patronizing a specific use on-site or a nearby site. This includes publicly owned parking lots designated for use by the general public, commercial parking lots open to the general public where a fee is charged to park, and park and ride lots.

**“Personal services category”** means a category of uses under NMC Chapter 15.303 that are engaged primarily in physical aesthetic services or non-medical treatment to individuals at the site.

**“Pound, dog or cat”** means premises where animals are impounded temporarily while their owners are being located or while awaiting adoption or final disposition.

**“Prison”** means a facility that lodges person being legally detained. It excludes jails associated with a police station that provide short-term detention, which is considered an accessory to an emergency service use.

**“Private club, lodge, meeting hall”** means a category of uses under NMC Chapter 15.303 that provide meeting areas that are restricted to those with membership in the host organization, or to individuals or organizations renting the space for special events. The activities may either be religious or non-religious. The activities may be non-profit or for profit, though for-profit activities are limited to those with membership or prospective membership in the organization renting the space.

**“Recreational vehicle park” or “RV park”:**

1. Means a place where two or more recreational vehicles are located within 500 feet of one another on a lot, tract or parcel of land under common ownership and having as its primary purpose:

- a. The renting of space and related facilities for a charge or fee; or
- b. The provision of space for free in connection with securing the patronage of a person.

2. Does not mean:

- a. An area designated only for picnicking or overnight camping; or
- b. A manufactured dwelling park or mobile home park.

**“Religious institution, place of worship category”** means a category of uses under NMC Chapter 15.303 that primarily provide meeting areas for religious activities.

**“Residential care home”** means a residential treatment or training home, as defined in ORS 443.400, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential care home.

**“Residential care facility”** means a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential care facility.

**“Retail food and beverage production category”** means a category of uses under NMC Chapter 15.303 that prepare and package food and beverages for retail sale or consumption on site, and for shipment for sales at other locations. These are medium sized operations, using 10,000 square feet or less of floor for production. The area on site devoted to retail sales and dining is at least 25 percent of the floor area.

**“Retail sales – general category”** means a category of uses under NMC Chapter 15.303 that sell or rent goods to the general public. Items are sold indoors, or, if

outdoors, are limited to small items that don't require machinery to load to customers. Most items for sale are stored on or picked up from the site. Operators may be commercial or non-profit entities.

**"Retail sales – bulk outdoor category"** means a category of uses under NMC Chapter 15.303 that sell or rent large items to the general public from stock displayed or stored in whole or in part outdoors. Large items include vehicles and materials that require forklifts, tow trucks, or other loading equipment to load to customers. Sales may include sale of other items indoors or outdoors.

**Retail sales - convenience category**" means a category of uses under NMC Chapter 15.303 that sell items to the general public that mostly are used or consumed the same day. Store size is limited to a specific floor area established by the zoning district. Items are sold predominantly indoors.

**"Secondhand store"** means a retail shop where all or nearly all goods sold are previously used household items. "Secondhand store" excludes used vehicle sales.

~~**"Self-service storage"** means a structure that provides separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing or removing personal property.~~

**"Self-service storage category"** means a category of uses under NMC Chapter 15.303 that provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing personal property.

~~**"Service station or gas station"** means a place or station selling motor fuel and oil for motor vehicles; selling, servicing and installing tires, batteries, accessories and related products; furnishing minor repair and service when conducted entirely within an enclosed building; and at which incidental services are conducted. "Service station or gas station" often includes the sale of other retail products such as food and snacks and the provision of a car wash. "Minor repair service," as used in this definition, shall be understood to exclude activities such as painting, body work, steam cleaning, tire recapping, major engine or transmission overhaul, or repair involving removal of a cylinder head or crankcase, and mechanical car washing which necessitates equipment to wash more than one car at a time.~~

**"School, primary or secondary category"** means a category of uses under NMC Chapter 15.303 that includes public and private schools, secular or parochial, at the primary, elementary, middle, junior high, or high school level that provide state mandated basic education primarily to minors.

**"Telecommunications facility"** means a land use which generates, detects or processes radio frequency (RF) energy for purposes of wireless telecommunication and which provides commercial transmission capabilities to convey intelligence such as voice, digital data, still or moving pictures. Services include cellular communication, personal communication services (PS), enhanced specialized mobile radio, specialized mobile radio and paging. The facility may include a cellular tower or monopole; antennas; feedlines; structures to support antennas, feedlines, and other receiving

and/or transmitting devices; transmitters, receivers and transceivers; accessory equipment, development and structures; and the land on which they are situated. This definition does not include amateur radio and citizen band radio equipment (see **"amateur ("ham") radio"** and **"citizen band (CB) radio"**).

**"Temporary merchant"** means a person or persons occupying a temporary, fixed location, not within a permanent building, and selling or delivering from stock on hand, doing business in much the same manner as a permanent business.

**"Traded sector industry office category"** means a category of uses under NMC Chapter 15.303 that includes corporate offices for traded-sector industries that design, research, or create a product where the manufacturing is done at a different facility, or the product is intangible or intellectual. It may include offices for management of corporations or sales of products where the primary market is beyond the local region. General public visits to the office are very infrequent.

**"Transit center"** means a location for the boarding or departing of passengers from buses, trains, taxis or similar common passenger carriers (excluding aircraft), typically for several fixed routes. **"Transit center"** may include accessories such as multiple shelters, rest rooms, food vending, parking lots, offices for transit personnel, and transit vehicle storage and repair areas.

**"Transportation facilities and improvements"** means the physical improvements used to move people and goods from one place to another. "Transportation facilities and improvements" includes the following:

1. Construction of streets, walkways, and associated improvements as part of an approved subdivision, partition, design review, or similar application.
2. Projects identified in the city's adopted transportation system plan.
3. Installation of culverts, pathways, medians, fencing, guardrails, walls, lighting, and similar types of improvements.
4. Normal operation, maintenance, repair, and preservation activities of existing transportation facilities.
5. Landscaping as part of a transportation facility.
6. Transit stops.

**"Utility distribution plant or yard"** means a facility that collect, distribute, or treat water, storm drainage, electrical power, natural gas, or similar material to serve areas beyond the immediate vicinity. It includes facilities that store and distribute equipment and material to repair streets and utilities. "Utility distribution plants and yards" include water treatment plants, street maintenance yards, and energy production facilities using material imported to the site. It excludes basic utilities and wastewater treatment plants.

**"Vacation rental home"** means a single-family dwelling unit that is used, rented or occupied for periods of less than 30 days, or is available, advertised, or listed by an

agent as available for use, rent for occupancy for periods of less than 30 days.  
"Vacation rental home" excludes bed and breakfast establishments.

"Vehicle, heavy duty" means a Class 7 or Class 8 vehicle under the US DOT Federal Highway Administration (FHWA) Vehicle Inventory and Use Survey (VIUS) standards, which has a gross vehicle weight rating of greater than 26,000 pounds.

"Vehicle, light duty" means a Class 1, 2, or 3 vehicle under the US DOT Federal Highway Administration (FHWA) Vehicle Inventory and Use Survey (VIUS) standards, which has a gross vehicle weight rating of 14,000 pounds or less.

"Vehicle, medium duty" means a Class 4, 5, or 6 vehicle under the US DOT Federal Highway Administration (FHWA) Vehicle Inventory and Use Survey (VIUS) standards, which has a gross vehicle weight rating of greater than 14,000 pounds but less than or equal to 26,000 pounds.

~~"Vehicle repair" means firms servicing passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Generally, the customer does not wait at the site while the service or repair is being performed. Examples include transmission or muffler shop, auto body shop, alignment shop, auto upholstery shop, auto detailing, and tire sales and mounting. Vehicle towing, storage, wrecking and salvage are classified as industrial service. This does not include truck stops.~~

~~"Warehouse and distribution" means a use that involves storage or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present. Examples include separate warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; trucking and bus yards; and wholesale distribution centers and cold storage for food or agricultural products.~~

"Warehouse, storage and distribution category" means a category of uses under NMC Chapter 15.303 that involve the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. It includes data centers that store and distribute electronic data. There is little on-site sales activity with the customer present.

"Wastewater treatment plant" means a facility for treatment and disposal of human waste collected from a large area. It excludes wastewater pump stations and septic systems.

~~"Waste-related" means a use that is characterized by receiving solid or liquid wastes from others for disposal on the site or for transfer to another location, including uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the biological decomposition of organic material. Waste-related uses also include uses that receive hazardous wastes from others and are subject to the regulations of OAR 340-100-110, Hazardous Waste Management. Examples include sanitary landfills, recycling facilities, limited use landfills, waste composting, energy recovery plants, wastewater~~

~~treatment plants, portable sanitary collection equipment storage and pumping, and hazardous-waste collection sites.~~

**“Waste-related category”** means a category of uses under NMC Chapter 15.303 that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, collect sanitary wastes, or manufacture or produce goods or energy from the biological decomposition of organic material. Waste-related uses also include uses that receive hazardous wastes from others and are subject to the regulations of OAR 340-100-110, Hazardous Waste Management.

**“Wholesale and industry sales category”** means a category of uses under NMC Chapter 15.303 that sell goods or merchandise to retailers, to industrial, commercial, institutional, or other professional business users, or to other wholesalers and related subordinated services. Items are only occasionally sold directly to the general public.

~~**“Wholesale sales”** means a use that involves selling, leasing, or renting products intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or order taking and often include display areas. Businesses may not be open to the general public. Products may be picked up on site or delivered to the customer. Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware, and office supplies.~~

**SECTION 3: The following shall be added as Newberg Development Code Section 15.225.110**

**15.225.110 Pre-existing uses now listed as a conditional use**

Where a use is legally established and continuing, but that use currently would require a conditional use permit, the use shall be considered as having a conditional use permit under the terms of the prior permit approval. Any nonconforming site development shall be subject to the provisions of Chapter 15.205.

**SECTION 4: The following shall be added as Newberg Development Code Section 15.302.032**

**15.302.032: Purposes of Each Zoning District**

**A. R-1 Low Density Residential District.**

1. The purpose of this land use designation is to provide for low density urban single-family residential uses at an average overall density of 4.4 units per gross buildable acre in the district. It is intended to provide a stable and healthful environment together with the full range of urban services.

2. Typical housing types will include single-family dwellings and planned unit developments. The district also is intended to allow low intensity institutional uses that operate consistent with peaceful enjoyment of residential neighborhoods. The R-1 district is intended to be consistent with the low density residential (LDR) designation of the comprehensive plan.

**B. R-2 Medium Density Residential District**

1. The purpose of this land use designation is to provide a wide range of dwelling types and styles at an average overall density of 9 units per gross buildable acre in the district.

2. Typical housing types will include single-family dwellings on small lots, attached single-family, duplex or multifamily dwellings, and manufactured dwelling parks. The district also is intended to allow low intensity institutional uses that operate consistent with peaceful enjoyment of residential neighborhoods. The R-2 district is intended to be consistent with the medium density residential (MDR) designation of the comprehensive plan.

**C. R-3 High Density Residential District**

1. The purpose of this land use designation is to provide multifamily dwellings of different types and styles at an average overall density of 16.5 units per gross buildable acre in the district.

2. Typical housing types will include duplexes, multifamily dwellings, and manufactured dwelling and mobile home parks. The district also is intended to allow low intensity institutional uses that operate consistent with peaceful enjoyment of residential neighborhoods. Density may vary depending on lot size, off-street parking area, transportation, landscaping and other site considerations. The R-3 district is intended to be consistent with the high density residential (HDR) designation of the comprehensive plan.

D. R-4 Manufactured Dwelling District

1. The purpose of this land use designation is to provide locations reserved for manufactured homes, manufactured dwelling parks, mobile home parks, manufactured home subdivisions, and related uses.

2. This district allows manufactured homes, mobile home parks, or manufactured home subdivisions at a density of up to 12 units per gross buildable acre. The R-4 district is intended to be consistent with the medium density residential (MDR) or high density residential (HDR) designation of the comprehensive plan.

E. RP Residential-Professional District. The RP residential-professional district provides for a desirable mixing of residential land uses with medical and local business office uses in possible close proximity to adjacent residential areas. The office building and parking coverage, traffic generation, open space and other external factors are intended to be compatible with the residential uses permitted. This district may be appropriate in transition areas between major land uses as indicated in the adopted plan. The RP district is intended to be consistent with commercial or residential designations on the Newberg comprehensive plan. RP districts shall be located as to conform to goals and policies identified within the Newberg comprehensive plan and in areas which have a minimal impact on the livability or appropriate development of abutting property.

F. C-1 Neighborhood Commercial District. The C-1 neighborhood commercial district is intended to create, preserve and enhance areas of retail establishments serving frequently recurring needs in convenient locations. It is typically appropriate for small convenience stores or neighborhood shopping centers located within residential neighborhoods. The C-1 district is intended to be consistent with the commercial (COM) designation of the comprehensive plan.

G. C-2 Community Commercial District. The C-2 community commercial district is intended to create, preserve and enhance areas with a wide range of retail sales, commercial services, and office establishments. Typical development types include individual commercial buildings on small and large sites, community shopping centers, and some outdoor retail uses. This district is typically located along highways and arterials. This district also includes some development which does not strictly fit the description of "commercial" but also does not merit a separate zoning district. The C-2 district is intended to be consistent with the commercial (COM) and mixed use (MIX) designations of the comprehensive plan.

H. C-3 Central Business District. The C-3 central business district is intended to preserve and enhance areas within which the greatest possible concentration of retail sales and business will occur. The district will be applied to the "core" area based upon the guidelines established in the comprehensive plan. The buildings and uses permitted reflect the desire to have parking provided on a district-wide basis rather than having

each individual building or use provide parking. The C-3 district is intended to be consistent with the commercial (COM) designation of the comprehensive plan.

I. C-4 Riverfront Commercial District

1. The purpose of the C-4 riverfront commercial district is to allow a mix of uses that:

a. Provides a variety of retail and commercial service type uses that benefit from proximity to the river.

b. Encourages access to and enjoyment of the Willamette River.

c. Ensures compatibility of development with the surrounding area and minimizes impacts on the environment.

2. Properties zoned in this district must comply with the development standards of the riverfront subdistrict, as described in NMC 15.352.010 through 15.352.050.

3. The C-4 district is intended to be consistent with the commercial/riverfront district (COM/RD) designation of the comprehensive plan.

J. M-1 Limited Industrial District. The M-1 limited industrial district is intended to create, preserve and enhance areas containing manufacturing and related establishments with limited external impact, and with an open and attractive setting. The M-1 limited industrial district is typically appropriate to locations near highways and arterials and nonmanufacturing areas. The M-1 district is intended to be consistent with the industrial (IND) and mixed use (MIX) designations of the comprehensive plan.

K. M-2 Light Industrial District. The M-2 light industrial district is intended to create, preserve and enhance areas containing a wide range of manufacturing and related establishments and is typically appropriate to areas providing a wide variety of sites with good rail or highway access. The M-2 district is intended to be consistent with the industrial (IND) designation of the comprehensive plan.

L. M-3 Heavy Industrial District. The M-3 heavy industrial district is intended to create, preserve and enhance areas containing manufacturing or related establishments which are potentially incompatible with most other establishments and are typically appropriate to areas which are most distant from residential areas, and which have extensive rail or shipping facilities. The M-3 district is intended to be consistent with the industrial (IND) designation of the comprehensive plan.

M. M-4 Large Lot Industrial District. The M-4 industrial employment district is divided into two subdistricts: the industrial employment subdistrict and the industrial commercial subdistrict. One of the main intents of these districts is to provide a variety of employment opportunities for the citizens of Newberg. Providing adequate jobs for our citizens leads to other related benefits, including a diversified and stable local economy, a stronger tax base, and environmental benefits from less out-commuting to jobs. In addition, providing adequate local jobs helps fulfill the stated desire of many citizens to "live here, work here, shop here." The M-4 District has two subdistricts:

Employment Subdistrict. Through a comprehensive planning process, the city identified a need for large lot industrial sites of at least 20 acres in size. Further analysis of potential areas identified the area south of Newberg, on either side of Highway 219, as the area best suited to meet the city's needs for large site industrial development. As part of the city's strategy for preserving large size industrial sites within industrial districts, the M-4 industrial employment subdistrict is intended to create, preserve and enhance areas containing large parcels (20+ acres) suitable for large industrial users and industrial planned unit developments. An approved plan for an industrial planned unit development is required prior to dividing a large parcel into lots or parcels that are less than 20 acres. The purpose of the planned unit development is to bring related industries and services that complement each other close together, resulting in synergistic effects arising from regular face-to-face communications, economies of scale, and reduced transportation time and cost.

Commercial Subdistrict. The industrial commercial subdistrict is intended to create, preserve and enhance areas for retail establishments serving the specific needs of the M-4 industrial employment area. The subdistrict is similar to the C-1 neighborhood commercial district, although the type and scale of uses permitted are limited to those that will directly support allowed uses within the M-4 industrial employment area. The area is not intended to serve pass-by traffic or provide for the general commercial needs of the community. The intent is to allow uses that complement the area while limiting or eliminating those uses that would have detrimental impact on the overall district.

Potential adverse impacts of industrial activity on adjacent uses are minimized by design and development standards as required by NMC 15.220.090. Large industrial sites and planned unit developments are configured and designed to minimize use-to-use conflicts within the industrial districts, as well as conflicts between industrial uses and those allowed in other districts. The M-4 district is intended to be consistent with the industrial (IND) and commercial (COM) designations of the comprehensive plan.

N. CF Community Facilities District. The purpose of the CF community facilities district is to provide for appropriate development of community facilities, primarily by public agencies or nonprofit organizations. It encourages the preservation of natural resources and open space resources inventoried in the comprehensive plan. The CF district is intended to be consistent with the parks (P) and public/quasi-public (PQ) designations in the comprehensive plan. It may also be consistent with any other designation of the comprehensive plan as determined by the city council.

O. I Institutional District. The I institutional district is intended to support and promote institutional uses. The district provides for the establishment and growth of large institutional campuses as well as accessory and compatible uses. The institutional district is intended to be consistent with the public/quasi-public (PQ) designation of the comprehensive plan.

P. AR Airport Residential District. The purpose of the AR airport residential district is to encourage and support the continued operation and vitality of Sportsman Airpark and to take advantage of the transportation options it provides by allowing airport-

related residential uses. Maximum overall density shall be 8.8 units per gross buildable acre. The AI district is intended to be consistent with the airport residential (AR) designation in the comprehensive plan.

Q. AI Airport Industrial District. The purpose of the AI airport industrial district is to encourage and support the continued operation and vitality of Sportsman Airpark by allowing airport-related industrial uses, and as such to promote economic development for the City of Newberg and Yamhill County. The AI airport industrial district is intended to recognize those areas devoted to or most suitable for the immediate operational facilities necessary for commercial and noncommercial aviation. It is also intended to provide areas for those activities directly supporting or dependent upon aircraft or air transportation when such activities, in order to function, require or benefit from a location within or immediately adjacent to primary flight operations and passengers or cargo service facilities. It is further intended to provide appropriate locations for airport-related light industrial uses that are compatible with and benefit from air transportation. The AI district is intended to be consistent with the industrial (IND) and public/quasi-public (PQ) designations in the comprehensive plan.

**SECTION 5: The following shall be added as Newberg Development Code  
Chapter 15.303**

**Chapter 15.303**

**USE CATEGORIES**

**Sections:**

15.303.010 Purpose

15.303.100 Agricultural uses

15.303.200 Residential uses

15.303.300 Institutional and public uses

15.303.310 Institutional care and housing

15.303.312 Day care category

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### **15.303.010 Purpose**

A. Defined and Categorized Uses. Chapter 15.305 lists the allowable uses in each zoning district. The uses listed are of two types:

1. Defined Uses. Defined uses are those uses that fit a specific definition contained the definition section under NMC 15.05.030. For example a “family child care home” is a specific defined use that is different than other day care type uses.

2. Use Categories. Use categories are used to describe land uses and activities that may be known by several common names, but are organized on the basis of common functional, product, or physical characteristics. For example beauty salons, tanning salons, and body art studios are classified into a general category “Personal Services.” Uses are assigned to the category whose description most closely describes the nature of the primary use. The "characteristics" subsection of each use category describes the characteristics of each use category. Developments may have more than one primary use. Developments may also have one or more accessory uses.

B. Interpretation. When a use’s category is not clearly identifiable, the director, through a Type I procedure, determines the applicable use category or similar use. The following is considered to determine what use category the use is in, and whether the activities constitute primary uses or accessory uses:

1. The description of the activity(ies) in relationship to the characteristics of each use category:

2. The relative amount of site or floor space and equipment devoted to the activity;
3. Relative amounts of sales from each activity;
4. The customer type for each activity;
5. The relative number of employees in each activity;
6. Hours of operation;
7. Building and site arrangement;
8. Vehicles used with the activity;
9. The relative number of vehicle trips generated by the activity;
10. How the use advertises itself; and
11. Whether the activity would function independently of the other activities on the site.

C. Developments with multiple primary uses. When all the primary uses of a development fall within one use category, then the development is assigned to that use category. For example, a development that contains a grocery store, a gift shop, and a pharmacy would be classified in the general retail sales category because all the primary uses are in that category. When the primary uses of a development fall within different use categories, each primary use is classified in the applicable category and is subject to the regulations for that category.

D. Accessory uses. The "accessory uses" subsection lists common accessory uses that are allowed by right in conjunction with the use unless stated otherwise in the regulations. Also, unless otherwise stated, they are subject to the same regulations as the primary use. Typical accessory uses are listed as examples with the categories.

E. Use of examples. The "examples" subsection of each use category provides a list of examples of uses that are included in the use category. The names of uses on the lists are generic. They are based on the common meaning of the terms and not on what a specific use may call itself. For example, a use whose business name is "wholesale liquidation" but that sells mostly to consumers, would be included in the general retail sales category rather than the wholesale and industry sales category. This is because the actual activity on the site matches the description of the general retail sales category.

F. Exclusions. The "exclusions" subsection of each use categories indicates uses that are classified not included in that particular use category.

### **15.303.100 Agricultural uses**

The following agricultural uses are defined in NMC 15.05.030:

- A. Horticulture.
- B. Livestock and poultry farming.
- C. Home gardening.
- D. Home livestock and poultry raising.

**15.303.200 Residential uses**

The following residential uses are defined in NMC 15.05.030:

- A. Dwelling, single-family detached.
- B. Dwelling, single-family attached.
- C. Manufactured home
- D. Manufactured dwelling park.
- E. Mobile home park.
- F. Manufactured home subdivision.
- G. Dwelling, two-family (duplex).
- H. Dwelling, multifamily.
- I. Dwelling, accessory.
- J. Dwelling, mixed-use.
- K. Dwelling, caretaker.
- L. Dormitory.
- M. Home occupation.

**15.303.300 Institutional and public uses**

**15.303.310 Institutional care and housing**

The following institutional care and housing uses are defined in NMC 15.05.030:

- A. Family child care home
- B. Residential care home
- C. Residential care facility
- D. Prison

**15.303.312 Day care category**

A. Characteristics. This category includes the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, during a part of the 24 hours of the day, with or without compensation. It also may include care or supervision of an adult during part of the 24 hours of the day where lodging is not provided.

B. Accessory uses. Play areas.

C. Examples. Preschools, adult day care centers.

D. Exclusions

1. Family child care homes.

2. Child care which does not require state registration or certification, such as babysitting.

3. Accessory day care that is provided primarily for the children of workers at the site is considered an accessory use.

4. Schools, primary or secondary.

5. Residential care homes and residential care facilities.

**15.303.315 Group care facility category**

A. Characteristics. The group care facility category includes licensed facilities that provide residential care alone or in conjunction with treatment or training or a combination thereof for sixteen or more individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

B. Accessory uses. Personal service uses, recreational facilities, dining facilities, or retail sales for use of tenants, employees, or tenant visitors.

C. Examples. Nursing homes, continuing care retirement facilities, addiction treatment centers, sanitariums.

D. Exclusions. Residential care homes, residential care facilities, and prisons are separate use categories. Assisted living facilities are classified as multiple family dwellings.

**15.303.316 Hospital category**

A. Characteristics. A medical institution that provides medical and surgical care to patients on an inpatient or emergency basis, which may be in addition to outpatient care.

B. Accessory uses. Personal service uses, dining facilities, or retail sales for use of patients, employees, or patient visitors.

C. Examples. Urgent care centers, medical practitioners who schedule office hours regularly to provide emergency care during nighttime hours.

D. Exclusions. Medical offices are a separate use category. Animal care.

### **15.303.320 Assembly uses**

#### **15.303.321 Religious institutions and places of worship category**

A. Characteristics. Religious institutions and places of worship primarily provide meeting areas for religious activities.

B. Accessory uses. Accessory uses include Sunday school facilities, parking, caretaker's housing, one transitional housing unit, and group living facilities such as convents. A transitional housing unit is a housing unit for one household where the average length of stay is less than 60 days. Religious schools, when accessory to a religious institution.

C. Examples. Examples include churches, temples, synagogues, and mosques.

D. Exclusions. Religious schools are included in schools.

#### **15.303.322 Private club, lodge, meeting hall category**

A. Characteristics. Private clubs, lodges, and meeting halls provide meeting areas that are restricted to those with membership in the host organization, or to individuals or organizations renting the space for special events. The activities may either be religious or non-religious. The activities may be non-profit or for profit, though for-profit activities are limited to those with membership or prospective membership in the organization renting the space.

B. Accessory Uses. Kitchens and dining areas for the use of the host organization or the individuals or organizations renting the facility.

C. Examples: Fraternal lodges, grange halls, wedding halls.

D. Exclusions. Religious institutions and places of worship is a separate category, however a private club, lodge, or meeting hall may be used for religious activities. Community services and commercial educational services are separate categories, though meeting halls may be rented for these types of uses. Meeting halls that are accessory to another use, such as a meeting room for tenants of an apartment complex, are accessory to that primary use.

**15.303.330 School uses**

**15.303.331 School, primary or secondary category**

A. Characteristics. This category includes public and private schools, secular or parochial, at the primary, elementary, middle, junior high, or high school level that provide state mandated basic education primarily to minors.

B. Accessory uses. Accessory uses include play areas, cafeterias, recreational and sport facilities, auditoriums, and before or after school daycare, and administrative offices.

C. Examples. Examples include public and private daytime schools, boarding schools and military academies.

D. Exclusions.

1. Preschools are classified as daycare uses.

2. Commercial music, dancing, tutoring, art or similar schools are classified as commercial educational services.

**15.303.332 College category**

A. Characteristics. This category includes public and private schools that provide post-secondary education primarily for adults, usually working toward a degree or certificate.

B. Accessory uses. Accessory uses include cafeterias, student dormitories, recreational and sport facilities, auditoriums, student book stores, and administrative offices.

C. Examples. Examples include public and private universities and community colleges.

D. Exclusions. Commercial music, dancing, tutoring, art or similar schools are classified as commercial educational services.

**15.303.333 Commercial educational services category**

A. Characteristics. Commercial educational services uses are conducted in an office or studio setting and generally focusing on serving students with supplemental education, enrichment, and/or tutoring, where a fee is usually charged for services.

B. Accessory uses. Accessory uses may include incidental retail (e.g., sale of instructional materials) or other amenities primarily for the use of employees and customers.

C. Examples. Examples include tutoring centers, computer classes, after school math and reading centers, arts and crafts classes, music and dancing school.

D. Exclusions. Schools, primary and secondary and colleges are separate use categories. Pre-schools are classified as daycare uses. Uses conducting lessons in the home of the provider are classified as home occupations.

#### **15.303.340 Parks and open spaces uses**

The following parks and open space use is defined in NMC 15.05.030:

A. Golf course.

#### **15.303.341 Open space category**

A. Characteristics. Open spaces provide outdoor space for natural feature preservation, or for walking, sitting, watching, or observing. Most of the area is left in native vegetation. Open spaces may be publicly or privately owned, and public access may be restricted or prohibited.

B. Accessory uses. Trails, viewing platforms, interpretive displays, benches, a single picnic table, including those with covers, not in close proximity to other such tables.

C. Examples. Nature preserves, stream corridors.

D. Exclusions. Parks are a separate use category. Active recreational facilities such as playgrounds or ballfields, pavilions or picnic areas including multiple tables or facilities in close proximity are classified as parks.

#### **15.303.342 Park category**

A. Characteristics. Park uses provide areas for outdoor recreation, whether passive or active. Parks may be privately or publicly operated, but no admission fee is charged.

B. Accessory uses. Accessory uses may include pavilions, club houses, maintenance facilities, concessions, caretaker's quarters, and parking.

C. Examples. Playgrounds, community sports fields, public squares, picnic pavilions.

D. Exclusions. Commercial recreational uses are a separate category. Open spaces without access or with only trails or observation areas are classified as open space. Recreational facilities accessory to a school, church, or public community center use, regardless of whether admission is charged are part of the primary use. Golf courses are a separate use.

#### **15.303.350 Public services uses**

The following public service uses are defined in NMC 15.05.030:

A. Pound, dog or cat.

B. Cemetery.

### **15.303.351 Community services category**

A. Characteristics. Community services are uses of a public, nonprofit, or charitable nature generally providing a local service to people of the community. Generally, they provide the service on the site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any time (for instance, any senior citizen could join a senior center). The use may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

B. Accessory uses. Accessory uses may include offices, meeting areas, food preparation areas, parking, health and therapy areas, daycare uses, and athletic facilities.

C. Examples. Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, social service facilities, vocational training for the physically or mentally disabled, soup kitchens, and surplus food distribution centers.

D. Exclusions.

1. Private lodges, clubs, and meeting rooms are a separate use category. Private or commercial athletic, health clubs, or museums are classified as commercial recreation.

2. Parks are a separate category.

3. Uses that provide lodging to individuals. These may be classified as dormitories, residential care homes, residential care facilities, or other uses depending on the nature of the lodging provided.

4. Public safety facilities are classified as emergency services.

### **15.303.352 Emergency services category**

A. Characteristics. Emergency services uses are facilities with personnel or equipment staged for quick response in case of emergency. The facility is operated by a public agency or private franchise agency.

B. Accessory uses. Jails for short term detention associated with a police station. Emergency vehicle and equipment storage or repair.

C. Examples. Police stations, fire stations, ambulance stations, and emergency highway safety equipment storage yards.

D. Exclusions. Emergency shelters are classified under community services. Utility maintenance yards are classified under utility distribution plant or yard.

### **15.303.360 Transportation uses**

The following transportation uses are defined in NMC 15.05.030:

- A. Transportation facilities and improvements
- B. Transit center
- C. Parking facility
- D. Airport
- E. Landing field
- F. Heliport
- G. Helipad
- H. Marina

**15.303.370 Utility uses**

The following transportation uses are defined in NMC 15.05.030:

- A. Basic utilities.
- B. Utility distribution plant or yard.
- C. Wastewater treatment plant.
- D. Telecommunication facility.

**15.303.400 Commercial uses**

**15.303.410 Commercial office uses**

**15.303.411 Medical office category**

A. Characteristics. Medical offices provide medical or surgical care to patients within the office. Care is provided by or under the direction of a government licensed medical practitioner. Services are provided on an outpatient basis only. Regular office hours are during the day with only occasional night time emergency care.

B. Accessory uses. Sale or rental of goods associated with the medical care.

C. Examples. Offices for licensed doctors, dentists, osteopaths, massage therapists, naturopathic physicians, outpatient laboratories where the patient testing is largely conducted on-site.

D. Exclusions

1. Hospitals and urgent care centers are classified under hospitals.

2. Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of the program, are classified as residential care homes, residential care facilities, or group care facilities, depending on the nature of the facility.

3. Medical laboratories other than outpatient laboratories are classified as commercial service or industrial service uses depending on the nature of the laboratory.

4. Personal care by someone other than a licensed medical practitioner is included in personal services.

e. Veterinary, animal, and pet care is included either as commercial service or industrial service depending on the nature of the use.

#### **15.303.412 Local business office category**

A. **Characteristics.** Local business offices are office uses that serve the local area. General public visits to the office may be frequent. There is little or no outdoor storage of equipment and materials. Vehicles regularly on site are limited to passenger and light duty vehicles. No manufacturing occurs on site. Materials on site are mostly hand carried.

B. **Accessory uses.** Accessory retail sales of items associated with the business is allowed.

C. **Examples.** Offices for attorneys, real estate agents, accountants, insurance agents, travel agents. Government offices.

D. **Exclusions.** Medical offices, personal services, and traded sector industrial offices are separate uses. Banks are commercial service uses. Office uses may be accessory to other uses, such as manufacturing, school, or church uses.

#### **15.303.420 Commercial sales and rentals**

The following commercial sales and rental uses are defined in NMC 15.05.030:

A. **Temporary merchant.**

#### **15.303.421 Retail sales – general category**

A. **Characteristics.** General retail sales uses sell or rent goods to the general public. Items are sold indoors, or, if outdoors, are limited to small items that don't require machinery to load to customers. Most items for sale are stored on or picked up from the site. Operators may be commercial or non-profit entities.

B. **Accessory uses.** Indoor manufacturing of small items primarily to be sold on site, such as retail bakeries or art studios, provided the floor area devoted to such production is less than the floor area devoted to retail sales. Repair of items sold, such as bicycles or vacuums. Wholesale sales of items that are primarily sold retail. Outdoor display for sale of two or fewer vehicles, or of bulky items requiring machinery to load occupying less than 1,000 square feet display area.

C. **Examples.** Pharmacies, department stores, secondhand stores, pawn shops, art sales.

D. Exclusions. Bulk outdoor retail, wholesale and industry sales, and retail convenience sales.

**15.303.422 Retail sales – bulk outdoor category**

A. Characteristics. Bulk outdoor sales uses sell or rent large items to the general public from stock displayed or stored in whole or in part outdoors. Large items include vehicles and materials that require forklifts, tow trucks, or other loading equipment to load to customers. Sales may include sale of other items indoors or outdoors.

B. Accessory uses. Indoor manufacturing of small items primarily to be sold on site. Repair of items sold, such as automobile repair. Wholesale sales of items that are primarily sold retail.

C. Examples. Automobile sales, RV sales, boat sales, bark chip sales, automobile rental, self-moving truck rental, retail lumber yard.

D. Exclusions. Retail indoor sales, wholesale and industry sales. Outdoor vehicle sales with two or fewer vehicles displayed is general retail sales.

**15.303.423 Retail sales - convenience category**

A. Characteristics. Convenience retail sales uses sell items to the general public that mostly are used or consumed the same day. Store size is limited to a specific floor area established by the zoning district. Items are sold predominantly indoors.

B. Accessory uses. Eating and drinking (non-alcohol related).

C. Examples. Mini-marts.

D. Exclusions. Retail sales - general.

**15.303.425 Retail food and beverage production category**

A. Characteristics. Uses in this category prepare and package food and beverages for retail sale or consumption on site, and for shipment for sales at other locations. These are medium sized operations, using 10,000 square feet or less of floor for production. The area on site devoted to retail sales and dining is at least 25 percent of the floor area.

B. Accessory uses. Drive-up service windows. Note that drive-up service windows require a conditional use permit in some zones. Entertainment.

C. Examples. Small scale wineries, breweries, and distilleries with tasting rooms on-site. Retail bakeries. Chocolate shops.

D. Exclusions. Wholesale bakeries, wineries, breweries, and distilleries with no or smaller retail or dining components are classified as light industrial uses. Restaurants or retail shops that also produce food or beverages, where dining or customer areas comprise the majority of the floor area, or all food is sold "take out," such as some brew

pubs and bakeries, are classified as eating and drinking establishment or general retail sales.

#### **15.303.430 Eating and drinking establishments category**

A. Characteristics. Eating and drinking establishments provide customers ready to consume food or drink for purchase. These establishments often provide tables and seating for the customers, and may provide take out or delivery service. Eating and drinking establishments are of two types:

1. Alcohol related are those establishments that serve alcohol and where minors are prohibited by law in any portion of the customer area.

2. Non-alcohol related are those establishments that do not serve alcohol, or that do serve alcohol but minors are not prohibited by law in any portion of the customer area.

B. Accessory uses. Drive-up service windows. Note that drive-up service windows require a conditional use permit in some zones. Entertainment. Bakeries, wineries, breweries, distilleries and similar food production areas provided the area devoted to production and storage is less than the floor area devoted to dining and retail sales, and the food is offered for sale on site.

C. Examples. Alcohol related uses include bars, night clubs, taverns, and tasting rooms. Non-alcohol related uses include restaurants, take-out food service, and soda fountains.

D. Exclusions. Non-profit membership-only clubs are classified in private clubs, lodges, and meeting halls.

#### **15.303.440 Commercial services uses**

The following commercial services uses are defined in NMC 15.05.030:

A. Temporary merchant.

#### **15.303.441 Personal services category**

A. Characteristics. Personal service uses are engaged primarily in physical aesthetic services or non-medical treatment to individuals at the site.

B. Accessory uses. Retail sale of products associated with the service is permitted, such as sale of hair care products at a beauty salon.

C. Examples. Beauty salons, barber shops, tanning salons, body art salons.

D. Exclusions. Personal services exclude medical offices.

**15.303.442 Commercial services category**

A. Characteristics. Commercial service establishments provide services to the general public for compensation. Customers typically come to the site to receive the service. Items that are brought in and serviced are predominantly small, hand carried items. Outdoor storage of materials on site is limited to small (under 400 square feet), fenced and screened areas. The establishments use passenger or light duty vehicles at the site; larger vehicles rarely visit the site. Operators may include government or non-profit organizations.

B. Accessory uses. Retail sale of items related to the service.

C. Examples. Banks, post offices, photocopy stores, dry cleaning and laundry services, mortuaries, small animal clinics and hospitals, sewing machine, vacuum, small appliance or jewelry repair shops, tailor shops, photography studios.

D. Exclusions. Outpatient medical laboratories are classified as medical office uses. Commercial kennels.

**15.303.443 Commercial vehicle services category**

A. Characteristics. Commercial vehicle service uses repair and service passenger vehicles, light duty vehicles and recreational vehicles for the general public. This includes fueling and washing services.

B. Accessory uses. Convenience retail uses.

C. Examples. Automobile service stations, auto repair, auto transmission, radiator, or electrical repair, car washes, towing businesses.

D. Exclusions. Servicing primarily to medium and heavy duty vehicles, farm equipment, and industrial vehicles is classified as industrial vehicle service.

**15.303.450 Commercial recreation uses**

**15.303.451 Commercial recreation – indoor category**

A. Characteristics. Indoor commercial recreation uses provide entertainment, recreation, and fitness activities for spectator or participants, within buildings. Fees usually are charged for admission or participation.

B. Accessory uses. Eating and drinking establishments and retail sales for spectators or participants. Outdoor commercial recreation uses occupying less than 10 percent of the site.

C. Examples. Theaters, skating rinks, billiard halls, bowling alleys, dance halls, indoor miniature golf courses, arcades, athletic clubs, gyms.

D. Exclusions. Recreational facilities accessory to a school or church use, regardless of whether admission is charged. Motor vehicle related commercial

recreation uses are a separate category. Temporary events of less than two weeks duration are regulated as exhibitors under Chapter 5.10.

**15.303.452 Commercial recreation – outdoor category**

A. Characteristics. Outdoor commercial recreation uses provide entertainment, recreation, and fitness activities for spectators or participants outdoors. Fees usually are charged for admission or participation.

B. Accessory uses. Eating and drinking establishments and retail sales for spectators or participants.

C. Examples. Drive-in theaters, sports stadiums, race tracks, outdoor driving ranges, amusement parks, outdoor miniature golf courses.

D. Exclusions. Recreational facilities accessory to a school or church use, regardless of whether admission is charged. Golf courses are a separate use. Vehicle related commercial recreation use is a separate category. Temporary events of less than two weeks duration are regulated as exhibitors under Chapter 5.10.

**15.303.453 Commercial recreation – motor vehicle related category**

A. Characteristics. Motor vehicle related commercial recreation uses provide entertainment or recreation with motorized vehicles for spectators and/or participants.

B. Accessory uses. Eating and drinking establishments and retail sales for spectators or participants.

C. Examples. Car or motorcycle racing tracks, drag strips, go cart tracks, remote control vehicles

D. Exclusions. Non-commercial remote control vehicle tracks open for public use or accessory to park use.

**15.303.460 Commercial lodging uses**

The following commercial lodging uses are defined in NMC 15.05.030:

A. Vacation rental home.

B. Bed and breakfast establishment.

C. Hotel or motel.

D. Recreational vehicle park.

**15.303.500 Industrial uses**

**15.303.501 Traded sector industry office category**

1. Characteristics. Traded-sector industry offices are corporate offices for traded-sector industries that design, research, or create a product where the manufacturing is

done at a different facility, or the product is intangible or intellectual. It may include offices for management of corporations or sales of products where the primary market is beyond the local region. General public visits to the office are very infrequent.

2. Accessory uses. On-site testing or modeling, where such manufacturing comprises less than 20 percent of the floor area.

3. Examples. Offices for architects, surveyors, engineers, financial institutions, insurance companies, manufacturing designers, software companies and internet based businesses where the clientele served by the office are largely beyond the local region, call centers, technical support centers, movie studios, television or radio station studios.

4. Exclusions.

a. Local business offices, medical offices, personal services, commercial services are separate uses.

b. Office uses accessory to on-site manufacturing are classified under the primary use.

#### **15.303.502 Industrial services category**

1. Characteristics. Industrial service uses provide services to other businesses or industries.. Services often are provided off site at the customer location. Services to the general public are allowed, but general public visits to the site are infrequent. Items to be serviced may be brought in and out by truck, trailer or forklift. Materials may be stored in warehouses, or outside in enclosed areas. Trailers and medium or heavy duty vehicles may be used and stored on site.

2. Accessory uses. Sale of items related to the service is permitted.

3. Examples. Plumbing, heating and cooling services, construction contractors, building or landscape maintenance services, large animal veterinary clinics/hospitals, laboratories, farm implement repair, medium and heavy duty vehicle repair.

4. Exclusions. Commercial vehicle service and commercial service are separate uses. Truck stops.

#### **15.303.503 Wholesale and industry sales category**

1. Characteristics. Wholesale sales uses sell goods or merchandise to retailers, to industrial, commercial, institutional, or other professional business users, or to other wholesalers and related subordinated services. Items are only occasionally sold directly to the general public.

2. Accessory uses. Retail sales of items to business people visiting the site.

3. Examples. Wholesale lumber yards, construction materials stores primarily serving contractors, construction equipment rental yards, wholesale nursery sales, agricultural machinery sales, agricultural supply stores.

4. Exclusions. Livestock sales.

**15.303.504 Warehouse, storage and distribution category**

1. Characteristics. Warehouse, storage and distribution uses involve the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. It includes data centers that store and distribute electronic data. There is little on-site sales activity with the customer present.

2. Accessory uses. Accessory uses may include offices, truck fleet parking and maintenance areas, rail spur or lead lines, docks, and repackaging of goods.

3. Examples. Examples include separate warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; cold storage plants, including frozen food lockers; storage of weapons and ammunition; major wholesale distribution centers; truck, marine, or air freight terminals; bus barns; parcel services; major post offices; grain terminals; the stockpiling of sand, gravel, or other aggregate materials; contractors equipment storage; and data centers.

4. Exclusions.

a. Uses that involve the transfer or storage of solid or liquid wastes are classified as waste-related uses.

b. Self-service storage is a separate use category.

**15.303.505 Self-service storage category**

1. Characteristics. Self-service storage uses provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing personal property.

2. Accessory uses. Accessory uses may include security and leasing offices. Living quarters for one resident manager per site are allowed. Other living quarters are subject to the regulations for residential uses. Use of the storage areas for sales, service and repair operations, or manufacturing is not considered accessory to the self-service storage use. The rental of trucks or equipment is also not considered accessory to a self-service storage use.

3. Examples. Examples include single story and multistory facilities that provide individual storage areas for rent. These uses are also called mini-warehouses. RV storage.

4. Exclusions. A transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred is in the warehouse, storage and distribution category.

### **15.303.506 Light manufacturing category**

1. Characteristics. Light manufacturing uses involves manufacturing, processing, fabrication, packaging, or assembly of goods. These types of firms are involved in the secondary processing and assembly of materials and components into finished products, generally for the wholesale market, for transfer to other plants, or to order for firms or consumers. The external impact from these uses is generally less than heavy manufacturing. Outdoor storage and processing of goods and materials is less than 10 percent of the site. Transportation needs are often met by truck. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).

2. Accessory uses. Retail sales of good produced on site, provided the floor are devoted to retail sales is small (less than 10 percent of the floor area, up to 2,000 square feet).

3. Examples. Instrument and machinery manufacturers, food processors, furniture manufacturers, wineries, wholesale bakeries.

4. Exclusions. Heavy manufacturing is a separate category.

### **15.303.507 Heavy manufacturing category**

1. Characteristics. Heavy manufacturing is a use that involves manufacturing, processing, fabrication, packaging, or assembly of large volumes of raw materials into refined products. These types of firms have significant external impacts. Outdoor storage and processing of goods and materials may exceed 10 percent of the site. Transportation needs are often met by both truck and rail. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).

2. Accessory uses. Retail sales of good produced on site, provided the floor are devoted to retail sales is small (less than 10 percent of the floor area, up to 2,000 square feet), and on-site sales represent less than 10 percent of total product sales.

3. Examples. Asphalt and concrete plants, paper mills, steel mills, abattoirs.

4. Exclusions. Uses that involve storage of materials without any processing.

### **15.303.508 Waste-related category**

1. Characteristics. Waste-related uses receive solid or liquid wastes from others for disposal on the site or for transfer to another location, collect sanitary wastes, or manufacture or produce goods or energy from the biological decomposition of organic material. Waste-related uses also include uses that receive hazardous wastes from others and are subject to the regulations of OAR 340-100-110, Hazardous Waste Management.

2. Accessory Uses. Accessory uses may include recycling of materials, offices, and repackaging and transshipment of by-products.

3. Examples. Examples include sanitary landfills, limited use landfills, waste composting, energy recovery plants, portable sanitary collection equipment storage and pumping, and hazardous-waste-collection sites, automobile wrecking yards.

4. Exclusions.

a. Disposal of clean fill, as defined in OAR 340-093-0030, is considered a fill, not a waste-related use.

b. Sewer pipes that serve a development are considered a Basic Utility.

c. Wastewater treatment plants are a separate use.

### **15.303.600 Miscellaneous uses**

The following residential uses are defined in NMC 15.05.030:

A. Accessory building

B. Accessory use.

## **SECTION 6: The following shall be added as Newberg Development Code Chapter 15.305:**

### **Chapter 15.305**

### **ZONING USE TABLE**

#### **15.305.010 Classification of Uses:**

The zoning use table under NMC 15.305.020 identifies the land uses that are allowed in the various zoning districts. The specific land use categories are described in NMC Chapter 15.303. The table identifies each use as one of the following:

P: Permitted Use: The use is a permitted use within the zone. Note that the use still may require design review, building permits, or other approval in order to operate.

C: Conditional Use: A conditional use permit is required for the use. See Chapter 15.225.

S: Special Use: The use is subject to specific standards as identified within this Code. The applicable section is included in the last column of the table.

(#): A note indicates specific limits on the use. These notes are listed at the bottom of the table.

X: Prohibited Use: The use is specifically prohibited.

If none of the codes above are indicated, then the use is not permitted within the zone.

**15.305.020 Zoning Use Table**

*[See the next pages for table to be inserted here]*

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Newberg Development Code - Zoning Use Table Revision

#	Use	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards	
100	<b>AGRICULTURAL USES</b>																				
Def.	Horticulture	P	P	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	
Def.	Livestock and poultry farming	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Def.	Home gardening	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Home livestock and poultry raising	S	S															S		Title 6	
200	<b>RESIDENTIAL USES</b>																				
Def.	Dwelling, single-family detached	P(2)	P	P(3)		P		C(4)	C(5)								P	P(6)		Subject to density limits of 15.405.010(B)	
Def.	Dwelling, single-family attached	S(2)	S	S(3)		S		C(4)	C(5)								P	P(6)		Subject to density limits of 15.415.050; Subject to density limits of 15.405.010(B)	
Def.	Manufactured home on individual lot	S(2)	S	S(3)	P(7)	S												P(6)		15.445.050 - 15.445.070; Subject to density limits of 15.405.010(B)	
Def.	Manufactured dwelling park		S	S	S															15.445.075 - 15.445.160	
Def.	Mobile home park		S	S	S															15.445.075 - 15.445.160	
Def.	Manufactured home subdivision		S	S	S															15.445.075 - 15.445.160	
Def.	Dwelling, two-family (duplex)	P(2)	P	P	C	P		C(4)	/C(5)								P			Subject to density limits of 15.405.010(B)	
Def.	Dwelling, multifamily	C	P	P	C	P		C(4)	/C(5)								P			Subject to density limits of 15.405.010(B)	
Def.	Dwelling, accessory	C	S	S	S	S											S			15.445 Article V.	
Def.	Dwelling, mixed-use						P(9)	P(10)	/C(5)	P(11)	C	C									
																					Limited to one per lot, and allowed whenever the use requires the on-site residence of such person.
Def.	Dwelling, caretaker		C	P		P											P				
Def.	Dormitory																				
Def.	Home occupation (No more than one outside paid employee)	S	S	S(13)	S	S	S(13)	S	S	S	15.415.060										
Def.	Home occupation (More than one outside paid employee)	C	C	C(13)	C	C	C(13)	C	C	C	15.415.060										
300	<b>INSTITUTIONAL AND PUBLIC USES</b>																				
310	<b>INSTITUTIONAL CARE AND HOUSING</b>																				
Def.	Family child care home	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)							P	P(13)		ORS 657A	
312	Day care	P	P	P	C	P	P	P	P	P	C	C	C	C	C	P	P		P(14)	ORS 657A	
Def.	Residential care home (5 or fewer people)	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)							P	P(13)		ORS 197.665	
Def.	Residential care facility (6-15 people)	C	P	P	C	P	C	C	C	C							P			ORS 197.665	
315	Group care facility (16+ people)	C	C	C	C	C	C	C	C	C							P				
316	Hospital	C	C	C	C	C	C	C	C	C							P				
Def.	Prison										C	C	C	C	C						
320	<b>ASSEMBLY</b>																				
321	Religious institution, place of worship	P	P	P	P	P	P	P	P	P		P(29)					C	P			
322	Private club, lodge, meeting hall																				
330	<b>SCHOOLS</b>																				

Key:  
P: Permitted use  
C: Conditional use - requires a conditional use permit  
S: Special use - use requires a special use permit  
X: Prohibited use  
(#): See notes for limitations

7/24/2013

Newberg Development Code - Zoning Use Table Revision

#	Use	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards
330	School, primary or secondary	P	P	P		P										C				
331	College	P	P	P		P	P	P(15)								C	P			
332	Commercial educational services	C	C	C		C	P	P								C				
340	<b>PARKS AND OPEN SPACES</b>																			
341	Open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
342	Park	P	P	P	P	P	P	P			P(16)					P(17)	P			
	Def. Golf course	P	P	P												P(17)				
350	<b>PUBLIC SERVICES</b>																			
351	Community services	C	C	C	C	P	P	P								C	P			
352	Emergency services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Def. Pound, dog or cat						C	C	C	C	C	C	C	C	C	C	C	C	C	ORS 97.46
	Def. Cemetery	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
360	<b>TRANSPORTATION</b>																			
	Def. Transportation facilities and improvements	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Def. Transit center						P	P	P	P	P	P	P	P	P					
	Def. Parking facility			P		C	C	P	P(18)	C	P	P	P	P	P					
	Def. Airport, landing field						C	C			C	C	C	C	C				P	
	Def. Helipad, helipad	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P
	Def. Marina									C										
	Pilings, piers, docks, and similar in-water structures									C										
370	<b>UTILITIES</b>																			
	Def. Basic utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Def. Utility distribution plant or yard										P	P	P	P	P					
	Def. Wastewater treatment plant										C	P	C							
	Telecommunication facility incorporated into existing structure/utility pole and no taller than 18 ft above existing structure/utility pole	C	C	C	C	C	S	S	S	S	S	S	S	S	S	S	S			15.445, Article IV
	Telecommunication facility, including radio towers and transmitters, which are 100 feet or less in height, except those incorporated into an existing structure no taller than 18 feet above that structure.						C	C	C	C	C	S(19)	S(19)	P	C	C	C			15.445, Article IV
	Telecommunication facility, including radio towers and transmitters, which are over 100 feet						C	C	C	C	C	C	C	C	C	C	C			15.445, Article IV
400	<b>COMMERCIAL USES</b>																			
410	<b>COMMERCIAL OFFICES</b>																			
411	Medical Office			C		P	P(20)	P	P(21)								P			
412	Local Business Office					P(22)	P(20)	P	P(21)											
420	<b>COMMERCIAL SALES AND RENTALS</b>																			
421	Retail sales - general						P(20)	P	P(15)	P	P(23)	P								

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Newberg Development Code - Zoning Use Table Revision

#	Use	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards	
422	Retail sales - bulk outdoor							P	C			P									
423	Retail sales - convenience						P(20)	P	P(21)	P		P(24)			P(25)						5.15.050 et seq.
	Def. Temporary merchant							S	S(21)												15.445, Article VIII
425	Retail food and beverage production							S	S												
430	<b>EATING AND DRINKING ESTABLISHMENTS</b>																				
430	Eating and drinking - alcohol related						P(20)	P	P(21)	P		P									Requires liquor license
430	Eating and drinking - non-alcohol related						P(20)	P	P(21)	P		P							C(26)		
440	<b>COMMERCIAL SERVICES</b>																				
441	Personal services					P	P(20)	P	P(21)	P											
442	Commercial services						P(20)	P	P(21)												
443	Commercial vehicle service							P	C		P(27)	P			P(28)						
	Def. Kennel, commercial							C	C		C	P	P	C	C						
450	<b>COMMERCIAL RECREATION</b>																				
451	Commercial recreation - indoors							P	P(15)		P(29)	P(29)									
452	Commercial recreation - outdoors							P				C									
	Commercial recreation - motor vehicle related											C							C(33)		
453	related											C									
460	<b>COMMERCIAL LODGING</b>																				
	Def. Vacation rental home	C	C	S	S	S	S(13)	S(13)	S(13)	S(13)											15.445, Article VII
	Def. Bed and breakfast (2 or fewer rooms)	C	S	S	S	S	S	S	S	S											15.445.010
	Def. Bed and breakfast (3 or more rooms)	C	C	C	C	C	C	S	S	S											15.445.010
	Def. Hotel or motel							P	P(15)	P											
	Def. Recreational vehicle park							C	C	C	C	C	C	C	C						15.445.170
500	<b>INDUSTRIAL USES</b>																				
501	Traded-sector industry office						P(30)	P	P		P	P	P	P					P(33)		
502	Industrial services							C													
503	Wholesale and industry sales							C(31)			P(31)	P	P	P	P						
504	Warehouse, storage, and distribution										P(32)	P	P	P	P						
505	Self-service storage							P			P	P	P	P	P						
506	Light manufacturing										P	P	P	P	P						
507	Heavy manufacturing										P	P	P	P	P						
508	Waste-related											P(34)	P	P	P						
600	<b>MISCELLANEOUS USES</b>																				
	Accessory building and use incidental to other permitted uses in the zone	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to permitted uses in the zone and not defined or categorized	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to conditional uses in the zone and not defined or categorized	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	

Key:  
P: Permitted use  
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Newberg Development Code - Zoning Use Table Revision

7/24/2013

#	Use	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards
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Notes

- (1) Limited to sites with pre-existing agricultural uses, including at time of annexation.
- (2) Limited to one per lot as a permitted use. More than one per lot allowed only through a conditional use permit or planned unit development, subject to density limits of 15.405.010(B).
- (3) Permitted on individual lots created prior to November 17, 1992. Homes on individual lots created on or after November 17, 1992 will only be permitted through the planned unit development process.
- (4) The permitted density shall be stated on the conditional use permit.
- (5) The dwelling units must front onto Hancock or Second Street. No more than 30 percent of a single street frontage of a block may be occupied by residential uses. Contiguous residential street frontage must be less than 60
- (6) One residence per lot with the addition of a tie-down or hangar for an airplane. At a minimum, a paved tie-down or hangar shall be provided on the property, or the property shall include permanent rights to a private hangar within the subdivision. See Chapter 15.336
- (7) The homes are not subject to the development standards set forth in NMC 15.445.050 through 15.445.070.
- (8) The units must be located on the same lots as another use permitted or conditionally permitted in the C-3 zone and may not occupy the first floor storefront area (the portion of the building closest to the primary street).
- (9) Permitted on the ground floor, one per lot in conjunction with any other use permitted or conditional use in the C-1 zone. On upper floors, dwelling units are unlimited and one parking space per dwelling unit is required.
- (10) Permitted above any permitted use in the C-2 zone. There shall be no density limitation. Parking shall be provided in private parking areas or garages on the basis of one parking space for each dwelling unit.
- (11) Must be located above ground floor commercial uses.
- (12) One residence of area not more than 40 percent of the area of the hangar floor, up to a maximum of 1,500 square feet, for an airport caretaker or security officer on each separate parcel.
- (13) Permitted in existing dwelling units only. New dwelling units may not be created for this use unless the dwelling unit would otherwise be allowed.
- (14) Allowed exclusively for employers or employees of businesses located within this district.
- (15) Facility over 40,000 square feet gross floor area requires a conditional use permit.
- (16) Allowed in areas designated in industrial area plans.
- (17) Limited to facilities owned or operated by a public agency.
- (18) Parking garages are a conditional use, and must have first floor street frontage of 40 feet or less for ingress or egress. First floor development must be commercial.
- (19) A conditional use permit is required if the facility is less than 2,000 feet from the nearest telecommunication facility.
- (20) Businesses in the C-1 zone that have hours of operation between 10 p.m and 7 a.m. require a conditional use permit.
- (21) Drive-up service windows accessory to an existing business on the site with walk-in customer service, such as a drive-up bank window, are allowed only with a conditional use permit. Otherwise, drive-up service windows, expect those in service on April 1, 2002, are prohibited. Changes in use will not be allowed.
- (22) Retail sales of goods on site not allowed.
- (23) Limited to second hand stores.
- (24) Store size is limited to 2,000 square feet gross floor area.
- (25) Store size is limited to 5,000 square feet gross floor area.
- (26) Use must demonstrate that it is compatible with airport operations.
- (27) Limited to service stations.
- (28) Limited to card lock fueling only. Retail services are limited to self-vending services.
- (29) Permitted provided the structure is designed for easy conversion to industrial use, including not having fixed seating.
- (30) Limited to 10,000 square feet maximum floor area.
- (31) Allowed indoors only.
- (32) Allowed indoors only. Outdoor use requires a conditional use permit.
- (33) Must be aviation related. See Chapter 15.332.
- (34) Limited to expansion or change of existing heavy manufacturing uses.

Key:

P: Permitted use

C: Conditional use - requires a conditional use permit

S: Special use - use requires a special use permit

X: Prohibited use

(#): See notes for limitations

**SECTION 7: Newberg Development Code Section 15.220.050 shall be amended as follows:**

15.220.050 Criteria for design review (Type II process).

A. Type I. The following criteria are required to be met in order to approve a Type I design review request:

1. Parking. Parking areas shall meet the requirements of NMC 15.440.010.
2. Setbacks and General Requirements. The proposal shall comply with NMC 15.415.010 through 15.415.060 dealing with height restrictions and public access; and NMC 15.405.010 through 15.405.040 and NMC 15.410.010 through 15.410.070 dealing with setbacks, coverage, vision clearance, and yard requirements.
3. Landscaping Requirements. The proposal shall comply with NMC 15.420.010 dealing with landscape requirements and landscape screening.
4. Signs. Signs shall comply with NMC 15.435.010 et seq. dealing with signs.
5. Zoning District Compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in NMC ~~15.304.010 through 15.328.040~~ 15.305.010 through 15.336.020.

B. Type II. The following criteria are required to be met in order to approve a Type II design review request:

1. Design Compatibility. The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.
2. Parking and On-Site Circulation. Parking areas shall meet the requirements of NMC 15.440.010. Parking studies may be required to determine if adequate parking and circulation are provided for uses not specifically identified in NMC 15.440.010. Provisions shall be made to provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. Parking areas shall be designed so that vehicles can efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.
3. Setbacks and General Requirements. The proposal shall comply with NMC 15.415.010 through 15.415.060 dealing with height restrictions and public access; and NMC 15.405.010 through 15.405.040 and NMC 15.410.010 through 15.410.070 dealing with setbacks, coverage, vision clearance, and yard requirements.
4. Landscaping Requirements. The proposal shall comply with NMC 15.420.010 dealing with landscape requirements and landscape screening.
5. Signs. Signs shall comply with NMC 15.435.010 et seq. dealing with signs.

6. Manufactured Dwelling, Mobile Home and RV Parks. Manufactured dwelling and mobile home parks shall also comply with the standards listed in NMC 15.445.075 through 15.445.100 in addition to the other clear and objective criteria listed in this section. RV parks also shall comply with NMC 15.445.170 in addition to the other criteria listed in this section.

7. Zoning District Compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in NMC ~~15.304.010 through 15.328.040~~ 15.305.010 through 15.336.020. Through this site review process, the director may make a determination that a use is determined to be similar to those listed in the applicable zoning district, if it is not already specifically listed. In this case, the director shall make a finding that the use shall not have any different or more detrimental effects upon the adjoining neighborhood area than those specifically listed.

8. Subdistrict Compliance. Properties located within subdistricts shall comply with the provisions of those subdistricts located in NMC 15.340.010 through 15.348.060.

9. Alternative Circulation, Roadway Frontage Improvements and Utility Improvements. Where applicable, new developments shall provide for access for vehicles and pedestrians to adjacent properties which are currently developed or will be developed in the future. This may be accomplished through the provision of local public streets or private access and utility easements. At the time of development of a parcel, provisions shall be made to develop the adjacent street frontage in accordance with city street standards and the standards contained in the transportation plan. At the discretion of the city, these improvements may be deferred through use of a deferred improvement agreement or other form of security.

10. Traffic Study Improvements. If a traffic study is required, improvements identified in the traffic study shall be implemented as required by the director.

**SECTION 8: Newberg Development Code Section 15.220.060 shall be amended as follows:**

**15.220.060 Additional requirements for ~~multi-unit~~ multifamily residential projects.**

The purpose of this section is to ensure that residential projects containing three or more units meet minimum standards for good design, provide a healthy and attractive environment for those who live there, and are compatible with surrounding development. As part of the site design review process, an applicant for a new ~~multi-unit~~ multifamily residential project must demonstrate that some of the following site and building design elements, each of which has a point value, have been incorporated into the design of the project. At least 14 points are required for attached single-family projects of any size and smaller multifamily projects with six or fewer units and at least 20 points are required for multifamily projects with seven or more units. For more information and illustrations of each element, refer to the Newberg Residential Development Design Guidelines (July 1997).

A. Site Design Elements.

1. Consolidate green space to increase visual impact and functional utility. This applies to larger projects which collectively have a significant amount of open space areas which can be consolidated into children's play areas, gardens, and/or dog-walking areas (three points).

2. Preserve existing natural features, including topography, water features, and/or native vegetation (three points).

3. Use the front setback to build a street edge by orienting building(s) toward the street with a relatively shallow front yard (12 to 15 feet for two-story buildings) to create a more "pedestrian-friendly" environment (three points).

4. Place parking lots to the sides and/or back of projects so that front yard areas can be used for landscaping and other "pedestrian-friendly" amenities (three points).

5. Create "outdoor" rooms in larger projects by grouping buildings to create well-defined outdoor spaces (two points).

6. Provide good-quality landscaping. Provide coordinated site landscaping sufficient to give the site its own distinctive character, including the preservation of existing landscaping and use of native species (two points).

7. Landscape at the edges of parking lots to minimize visual impacts upon the street and surrounding properties (two points).

8. Use street trees and vegetative screens at the front property line to soften visual impacts from the street and provide shade (one point).

9. Use site furnishings to enhance open space. Provide communal amenities such as benches, playground equipment, and fountains to enhance the outdoor environment (one point).

10. Keep fences neighborly by keeping them low, placing them back from the sidewalk, and using compatible building materials (one point).

11. Use entry accents such as distinctive building or paving materials to mark major entries to ~~multi-unit~~ multifamily buildings or to individual units (one point).

12. Use appropriate outdoor lighting which enhances the nighttime safety and security of pedestrians without causing glare in nearby buildings (one point).

B. Building Design Elements.

1. Orient buildings toward the street. For attached single-family and smaller multifamily projects, this means orienting individual entries and porches to the street. In larger projects with internal circulation and grounds, this means that at least 10 percent of the units should have main entries which face the street rather than be oriented toward the interior (three points).

2. Respect the scale and patterns of nearby buildings by reflecting the architectural styles, building details, materials, and scale of existing buildings (three points).

3. Break up large buildings into bays by varying planes at least every 50 feet (three points).

4. Provide variation in repeated units in both single-family attached and large multifamily projects so that these projects have recognizable identities. Elements such as color; porches, balconies, and windows; railings; and building materials and form, either alone or in combination, can be used to create this variety (three points).

5. Building Materials. Use some or all of the following materials in new buildings: wood or wood-like siding applied horizontally or vertically as board and batten; shingles,

as roofing, or on upper portions of exterior walls and gable ends; brick at the base of walls and chimneys; wood or wood-like sash windows; and wood or wood-like trim (one point for each material described above).

6. Incorporate architectural elements of one of the city's historical styles (Queen Anne, Dutch colonial revival, colonial revival, or bungalow style) into the design to reinforce the city's cultural identity. Typical design elements which should be considered include, but are not limited to, "crippled hip" roofs, Palladian-style windows, roof eave brackets, dormer windows, and decorative trim boards (two points).

7. Keep car shelters secondary to the building by placing them to the side or back of units and/or using architectural designs, materials, and landscaping to buffer visual impacts from the street (two points).

8. Provide a front porch at every main entry as this is both compatible with the city's historic building pattern and helps to create an attractive, "pedestrian-friendly" streetscape (two points).

9. Use sloped roofs at a pitch of 3:12 or steeper. Gable and hip roof forms are preferable (two points).

**SECTION 9: Newberg Development Code Section 15.240.020(G) shall be amended as follows:**

*This amendment in this section is simply to insure consistent terminology.*

G. Buildings and Uses Permitted. Buildings and uses in planned unit developments are permitted as follows:

1. R-1, R-2, R-3 and RP Zones.

a. Buildings and uses permitted outright or conditionally in the use district in which the proposed planned unit development is located.

b. Accessory buildings and uses.

c. Duplexes.

d. Dwellings, single, manufactured, and ~~multiple-family~~ multifamily.

e. Convenience commercial services which the applicant proves will be patronized mainly by the residents of the proposed planned unit development.

2. C-1, C-2 and C-3 Zones.

a. When proposed as a combination residential-commercial planned unit development, uses and buildings as listed in subsection (G)(1) of this section and those listed as permitted outright or conditionally in the use district wherein the development will be located.

b. When proposed as a residential or commercial planned unit development, uses and buildings as permitted outright or conditionally in the use district wherein the development will be located.

3. M-1, M-2 and M-3 Zones. Uses and buildings as permitted outright or conditionally in the use district wherein the development will be located.

4. M-4 Zone. Uses and buildings as permitted outright or conditionally in the use district wherein the development will be located. Proposed sites, structures and uses must work together to support a common theme, product or industry. Applicants for an industrial planned development in M-4 must demonstrate conformance with any adopted master plan for the subject area and provide a plan describing how the

proposed structures and uses will work together to support a common theme, product or industry. Prior to subdivision, covenants must limit occupancy to the types of industrial and related uses identified in the development plan.

**SECTION 10: Newberg Development Code Section 15.240.020(Q) shall be amended as follows:**

*This amendment in this section is simply to insure consistent terminology.*

Q. Design Standards. The proposed development shall meet the design requirements for ~~multi-unit~~ multifamily residential projects identified in NMC 15.220.060. A minimum of 40 percent of the required points shall be obtained in each of the design categories.

**SECTION 11: Newberg Development Code Section 15.242.020 shall be amended as follows:**

*This amendment in this section is simply to insure consistent terminology.*

**15.242.020 Flexible development standards.**

Developers choosing this option may elect to use any/all of the following flexible development standards. Use of this option will require the developer to make provisions for affordable housing as described in NMC 15.242.030.

A. Lot Standards.

1. Street Frontage. Lot frontage or easement width required may be reduced from 25 feet to 20 feet.

2. Lot Depth-to-Width Ratio. Lot depth-to-width ratio may exceed standards otherwise permitted.

3. Other Lot Dimensions. Other required lot dimensions, such as lot width, may be reduced without limit.

4. Rounding Up Credit for "Partial" Lots. Where the maximum number of lots allowed is a fraction, the number of lots allowed may be rounded (with decimals 0.5 or over rounded up). For example, where zoning allows 10.8 lots, the applicant may round up to 11 lots. Lot sizes within the development may be reduced by up to 25 percent in order to attain the partial lot.

5. ~~Multi-Unit~~Multifamily Density Bonus. ~~Multi-unit~~ Multifamily residential developments may increase the allowed number of units by up to five percent beyond the maximum density otherwise allowed in the zone.

6. Minimum Lot Size. Minimum lot sizes may be reduced as follows:

a. R-2: reduce from 3,000 square feet to 2,500 square feet.

b. R-3: reduce from 3,000 square feet to 1,500 square feet.

c. R-P: reduce from 3,000 square feet to 2,500 square feet.

B. Site Design Standards.

1. Side Yard Setback. Side yard setback may be reduced to three feet.

2. Front Yard Setback. Front yard setbacks may be reduced to 10 feet.

3. Coverage. Lot coverage, parking coverage or combined coverage may be increased an additional 10 percent beyond the applicable standard (for example, from 30 percent to 40 percent).

C. Street and Sidewalk Standards.

1. Sidewalk Location. Sidewalks may be constructed on one side only of local streets.

2. Sidewalk Type. Curb-side sidewalks, six feet in width, may be constructed on local streets, eliminating required planter strips.

3. Street Width. Subject to fire marshal and city engineer approval, street width may be reduced to 28 feet with parking on both sides where, in their determination, adequate emergency access, large vehicle access, and parking can be maintained.

4. Right-of-Way Width. Right-of-way width may be reduced, depending upon the street/planter strip/sidewalk configuration. In no case shall the right-of-way width be less than 38 feet.

**SECTION 12: Newberg Development Code Section 15.242.020 shall be amended as follows:**

*This amendment in this section is simply to insure consistent terminology.*

**15.405.010 Lot area – Lot areas per dwelling unit.**

A. In the following districts, each lot or development site shall have an area as shown below except as otherwise permitted by this code:

1. In the R-1 district, each lot or development site shall have a minimum area of 5,000 square feet or as may be established by a subdistrict. The average size of lots in a subdivision intended for single-family development shall not exceed 10,000 square feet.

2. In the R-2, R-3, and RP districts, each lot or development site shall have a minimum area of 3,000 square feet or as may be established by a subdistrict. In the R-2 and R-P districts, the average size of lots in a subdivision intended for single-family development shall not exceed 5,000 square feet.

3. In the AI, AR, C-1, C-2, and C-3 districts, each lot or development site shall have a minimum area of 5,000 square feet or as may be established by a subdistrict.

4. In the M-1, M-2 and M-3 districts, each lot or development site shall have a minimum area of 20,000 square feet.

5. Institutional districts shall have a minimum size of five contiguous acres in order to create a large enough campus to support institutional uses; however, additions to the district may be made in increments of any size.

6. Within the commercial zoning district(s) of the riverfront overlay subdistrict, there is no minimum lot size required, provided the other standards of this code can be met.

B. Lot or Development Site Area per Dwelling Unit.

1. In the R-1 district, there shall be a minimum of 5,000 square feet per dwelling unit.

2. In the R-2, AR, and R-P districts, there shall be a minimum of 3,000 square feet of lot or development site area per dwelling unit. In the R-2 and R-P districts, lots or development sites in excess of 15,000 square feet used for multiple single-family, duplex or ~~multiple-family~~ multifamily dwellings shall be developed at a minimum of one dwelling per 5,000 square feet lot area.

3. In the R-3 district, there shall be a minimum of 1,500 square feet of lot or development site area per dwelling unit. Lots or development sites in excess of 15,000 square feet used for multiple single-family, duplex or ~~multiple-family~~ multifamily dwellings shall be developed at a minimum of one dwelling per 2,500 square feet lot area.

C. In calculating lot area for this section, lot area does not include land within public or private streets. In calculating lot area for maximum lot area/minimum density requirements, lot area does not include land within stream corridors, land reserved for public parks or open spaces, commons buildings, land for preservation of natural, scenic, or historic resources, land on slopes exceeding 15 percent or for avoidance of identified natural hazards, land in shared access easements, public walkways, or entirely used for utilities, land held in reserve in accordance with a future development plan, or land for uses not appurtenant to the residence.

D. Lot size averaging is allowed for any subdivision. Some lots may be under the minimum lot size required in the zone where the subdivision is located, as long as the average size of all lots is at least the minimum lot size.

**SECTION 13: Newberg Development Code Section 15.410.050 shall be amended as follows:**

*This amendment in this section is simply to insure consistent terminology.*

**15.410.050 Special setback requirements to planned rights-of-way.**

A. Yard Requirements for Property Abutting Partial or Future Street Rights-of-Way.

1. Except as provided in subsection (A)(2) of this section, no building shall be erected on a lot which abuts a street having only a portion of its required width dedicated, unless the yards provided and maintained in connection with such building have a width and/or depth needed to complete the street width plus the width and/or depths of the yards required on the lot by this code.

2. Where a comprehensive plan street design or a future street plan exists, the placement of buildings and the establishment of yards where required by this code shall relate to the future street boundaries as determined by said plans.

B. Planned Street Right-of-Way Widths. Planned street right-of-way widths are established as indicated in subsection (C) of this section for the various categories of streets shown in the transportation system plan.

C. A lot or parcel of land in any district adjoining a street for which the planned right-of-way width and alignment has been determined shall have a building setback line equal to the yard required in the district, plus a distance of:

1. Fifty feet from and parallel with the centerline of expressways.
2. Thirty-five feet from and parallel with the centerline of major and minor arterials.
3. Thirty feet from and parallel with the centerline of ~~multiple-family~~multifamily, commercial and industrial streets and single-family collector streets.
4. Thirty feet from and parallel with the centerline of single-family local streets.
5. Twenty-five feet from and parallel with the centerline of single-family hillside, cul-de-sacs and local streets which will never be extended more than 2,400 feet in length and which will have a relatively even division of traffic to two or more exits.

Exceptions to the above five classifications are shown in the transportation system plan.

D. The centerline of planned streets shall be either the officially surveyed centerline or a centerline as on a precise plan. In the event of conflict between the two, the latter-described line shall prevail. In all other cases, a line midway between properties abutting the right-of-way shall be the centerline for the purposes of this code.

**SECTION 14: Newberg Development Code Section 15.420.020 shall be amended as follows:**

*This amendment in this section is simply to insure consistent terminology.*

**15.420.020 Landscaping and amenities in public rights-of-way.**

The following standards are intended to create attractive streetscapes and inviting pedestrian spaces. A review body may require any of the following landscaping and amenities to be placed in abutting public rights-of-way as part of ~~multiple dwelling~~multifamily, commercial, industrial, or institutional design reviews, or for subdivisions and planned unit developments. In addition, any entity improving existing rights-of-way should consider including these elements in the project. A decision to include any amenity shall be based on comprehensive plan guidelines, pedestrian volumes in the area, and the nature of surrounding development.

A. Pedestrian Space Landscaping. Pedestrian spaces shall include all sidewalks and medians used for pedestrian refuge. Spaces near sidewalks shall provide plant material for cooling and dust control, and street furniture for comfort and safety, such as benches, waste receptacles and pedestrian-scale lighting. These spaces should be designed for short-term as well as long-term use. Elements of pedestrian spaces shall not obstruct sightlines and shall adhere to any other required city safety measures. Medians used for pedestrian refuge shall be designed for short-term use only with plant material for cooling and dust control, and pedestrian-scale lighting. The design of these spaces shall facilitate safe pedestrian crossing with lighting and accent paving to delineate a safe crossing zone visually clear to motorists and pedestrians alike.

1. Street trees planted in pedestrian spaces shall be planted according to NMC 15.420.010(B)(4).
2. Pedestrian spaces shall have low (two and one-half feet) shrubs and ground covers for safety purposes, enhancing visibility and discouraging criminal activity.
  - a. Plantings shall be 90 percent evergreen year-round, provide seasonal interest with fall color or blooms, and at maturity maintain growth within the planting area (refer to plant material matrix below).
  - b. Plant placement shall also adhere to clear sight line requirements as well as any other relevant city safety measures.
3. Pedestrian-scale lighting shall be installed along sidewalks and in medians used for pedestrian refuge.
  - a. Pole lights as well as bollard lighting may be specified; however, the amount and type of pedestrian activity during evening hours, e.g., transit stops, nighttime service districts, shall ultimately determine the type of fixture chosen.
  - b. Luminaire styles shall match the area/district theme of existing luminaires and shall not conflict with existing building or roadway lights causing glare.
  - c. Lighting heights and styles shall be chosen to prevent glare and to designate a clear and safe path and limit opportunities for vandalism (see Appendix A, Figure 17, Typical Pedestrian Space Layouts).
  - d. Lighting shall be placed near the curb to provide maximum illumination for spaces furthest from building illumination. Spacing shall correspond to that of the street trees to prevent tree foliage from blocking light.
4. Street furniture such as benches and waste receptacles shall be provided for spaces near sidewalks only.
  - a. Furniture should be sited in areas with the heaviest pedestrian activity, such as downtown, shopping districts, and shopping centers.

b. Benches should be arranged to facilitate conversation between individuals with L-shaped arrangements and should face the area focal point, such as shops, fountains, plazas, and should divert attention away from nearby traffic.

5. Paving and curb cuts shall facilitate safe pedestrian crossing and meet all ADA requirements for accessibility.

B. Planting Strip Landscaping. All planting strips shall be landscaped. Planting strips provide a physical and psychological buffer for pedestrians from traffic with plant material that reduces heat and dust, creating a more comfortable pedestrian environment. Planting strips shall have different arrangements and combinations of plant materials according to the frequency of on-street parking (see Appendix A, Figures 18 and 19).

1. Planting strips which do not have adjacent parking shall have a combination of ground covers, low (two and one-half feet) shrubs and trees. Planting strips adjacent to frequently used on-street parking, as defined by city staff, shall only have trees protected by tree grates, and planting strips adjacent to infrequently used on-street parking shall be planted with ground cover as well as trees (see Appendix A, Figures 18 and 19, Typical Planting Strip Landscaping). District themes or corridor themes linking individual districts should be followed utilizing a unifying plant characteristic, e.g., bloom color, habit, or fall color. When specifying thematic plant material, monocultures should be avoided, particularly those species susceptible to disease.

2. Street trees shall be provided in all planting strips as provided in NMC 15.420.010(B)(4).

a. Planting strips without adjacent parking or with infrequent adjacent parking shall have street trees in conjunction with ground covers and/or shrubs.

b. Planting strips with adjacent parking used frequently shall have only street trees protected by tree grates.

3. Shrubs and ground covers shall be provided in planting strips without adjacent parking with low (two and one-half feet) planting masses to enhance visibility, discourage criminal activity, and provide a physical as well as psychological buffer from passing traffic.

a. Plantings shall be 90 percent evergreen year-round, provide seasonal interest with fall color or blooms and at maturity maintain growth within the planting area.

b. Ground cover able to endure infrequent foot traffic shall be used in combination with street trees for planting strips with adjacent occasional parking (refer to plant material matrix below).

c. All plant placement shall adhere to clear sight line requirements as well as any other relevant city safety measures.

C. Maintenance. All landscapes shall be maintained for the duration of the planting to encourage health of plant material as well as public health and safety. All street trees and shrubs shall be pruned to maintain health and structure of the plant material for public safety purposes.

D. Exception. In the AI airport industrial district and AR airport residential district, no landscape or amenities except for grass are required for any area within 50 feet of aircraft operation areas including aircraft parking areas, taxiways, clear areas, safety areas, object-free areas, and the runway.

**SECTION 15: Newberg Development Code Section 15.440.010 shall be amended as follows:**

*This amendment in this section is simply to insure consistent terminology and references.*

**15.440.010 Required off-street parking.**

A. Off-street parking shall be provided on the development site for all R-1, C-1, M-1, M-2 and M-3 zones. In all other zones, the required parking shall be on the development site or within 400 feet of the development site which the parking is required to serve. All required parking must be under the same ownership as the development site served except through special covenant agreements as approved by the city attorney, which bind the parking to the development site.

B. Off-street parking is not required in the C-3 district, except for:

1. Dwelling units ~~as noted in NMC 15.316.020~~ meeting the requirements noted in NMC 15.305.020.

2. New development which is either immediately adjacent to a residential district or separated by nothing but an alley.

C. Within the C-4 district, the minimum number of required off-street parking spaces shall be 50 percent of the number required by NMC 15.440.030, except that no reduction is permitted for residential uses.

**SECTION 16: Newberg Development Code Section 15.440.030 shall be amended as follows:**

*This amendment in this section is simply to insure consistent terminology.*

**15.440.030 Parking spaces required.**

Use	Minimum Parking Spaces Required
Residential Types	

Use	Minimum Parking Spaces Required
<b>Residential Types</b>	
Dwelling, <del>multiple</del> <u>multifamily</u> and multiple single-family dwellings on a single lot	

**SECTION 17: The following shall be added as Newberg Development Code  
Chapter 15.445, Article VII:**

**Article VII. Vacation Rental Homes**

**15.445.300 Application and purpose**

These standards apply to a and single-family dwelling unit that is used, rented or occupied for periods of less than 30 days, or is available, advertised, or listed by an agent as available for use, rent for occupancy for periods of less than 30 days. The purpose is to maintain the peace, quiet, traffic patterns, and property maintenance typical for the residential neighborhood.

**15.445.310 Where allowed**

Vacation rental homes are permitted in areas shown on Chapter 15.305. The vacation rental home must be a structure approved for occupancy as a single-family dwelling unit.

**15.445.320 Registration required**

Prior to use or advertising for use of a dwelling as a vacation rental home, the owner or operator shall register the vacation rental home with the city on forms provided by the director. The registration shall include such information required by the director, including the name and contact information for the owner, operator and a local contact.

**15.445.330 Standards**

- A. The vacation rental home shall provide a minimum of two parking spaces on the site that are available for use of the rental occupants.
- B. The applicant shall provide for regular refuse collection.
- C. The vacation rental home may not be occupied by more than two rental occupants per bedroom, up to a maximum of 15 people.
- D. The premises of the vacation rental home may not include any occupied recreational vehicle, trailer, tent or temporary shelter during the rental occupancy.

**15.445.340 Registration posting**

The applicant shall post the vacation rental home registration within the dwelling adjacent to the front door. At a minimum, the posting will contain the following information:

- A. The name of the operator and a telephone number where the operator may be reached.
- B. The telephone number for the police department.

- C. The maximum number of occupants permitted to stay in the dwelling.
- D. The standards for the rental occupancy.
- E. The solid waste collection day.

**15.445.350 Complaints and revocation of registration**

If the city receives two or more written complaints within a one year period regarding a vacation rental home occupancy, and the issues have not been resolved through the code enforcement officer, the city manager may schedule a hearing to consider revoking the vacation rental home registration. The hearing may be conducted by the city manager, or other such hearings officer as the city manager may appoint for this purpose. The city manager shall notify the owner and operator of the hearing, those submitting written complaints, and may invite others to submit testimony at the hearing. After hearing the facts, the city manager may do any of the following:

- A. Revoke the registration for noncompliance with the standards in this section. If this permit is revoked, the premises may not be used as a vacation rental home for a period of two years, or a period of lesser time as determined by the hearings officer.
- B. Impose additional conditions necessary to fulfill the purpose of this section.
- C. Establish a probationary period to monitor compliance.
- D. Dismiss the complaint.
- E. Refer the matter to the code enforcement officer for citation in municipal court or other appropriate jurisdiction.

The hearings officer's decision may be appealed to the planning commission by the applicant, owner, or person filing the written complaint within 14 calendar days of the date of the decision in the manner provided in NMC 15.100.170.

**SECTION 18: The following shall be added as Newberg Development Code Chapter 15.445, Article VIII:**

**Article VIII. Small Scale Food and Beverage Production in Commercial Zones**

**15.445.400 Application and purpose**

These standards apply to small scale food and beverage production in commercial zones. These uses are primarily manufacturing, processing and storage facilities but have accessory tasting rooms, dining areas, or retail space. Some types of retail bakeries, wineries, breweries and distilleries fit in this category. The purpose is to allow small scale food and beverage production in commercial zones if the uses can meet certain design standards that will maintain the commercial character of the zone. Larger scale food and beverage production is allowed in certain of Newberg's industrial zones.

15.445.410 Where allowed

Small scale food and beverage production is allowed in the C-2 and C-3 commercial zones if the use meets the development standards listed below. If the use cannot meet the development standards below then it is a conditional use in the C-2 and C-3 commercial zones and would require review by the Planning Commission.

15.445.420 Standards

A. Retail use: At least 25% of the gross floor area must be for retail, dining, or similar customer use, with a minimum of 1,000 square feet.

B. Not next to residential: The site cannot abut a site with residential zoning.

C. Loading area: The site must have a loading area for trucks. This could be a loading dock, an on-site paved loading area, or an adjacent alley.

D. Size limit: The maximum size of the production area is limited to 10,000 square feet.

E. Outdoor storage: Outdoor storage of materials on site is limited to a small (under 400 square feet) fenced and screened area.

15.445.430 Approval

To obtain approval for a small scale food and beverage production use in the C-2 or C-3 commercial zones the applicant must demonstrate compliance with all of the development standards. The application shall be processed as a Type I or II design review procedure, depending on the extent of building remodeling, as regulated by NMC 15.220.020. If the proposed use cannot meet any of the design standards in 15.445.420 then it would require a Type III conditional use permit and design review as regulated by NMC 15.225.

**SECTION 19: The following shall be added as NMC 15.505.060(J):**

J. The planning commission may approve modifications to public street standards for the purpose of ingress or egress to a minimum of three and a maximum of six lots through a conditional use permit.

*Comment: This provision moved from NMC 15.225.070(N)*

**SECTION 20: The following shall be added to the definitions in NMC 6.05.010:**

“Hobby kennel” means an accessory use to a single-family dwelling unit where four or more adult dogs are kept by the resident for their own use and enjoyment without compensation. An adult dog is one that has reached the age of six months.

**SECTION 21: NMC 6.05.050 shall be amended as follows:**

**6.05.050 Permit for certain animals and fowl.**

Any person, firm, corporation or association desiring to keep or maintain within the corporate limits of the city any wild or domestic fowl, wild or domestic animals, cats and dogs excepted, or any honeybees, shall apply for a permit from the police department, who shall make an investigation and issue the said permit. Any permit issued may be revoked at any time, either by the police department or by the city council, whenever it shall be made to appear that the maintenance of said fowl, animals or bees interferes with the rights of others in the enjoyment of their property, peace, health and safety. Permits only shall be issued for properties zoned R-1, R-2, or AR.

**SECTION 22: The following shall be added as NMC 6.05.055**

**6.05.055 Hobby kennel.** Any resident desiring to keep or maintain a hobby kennel shall apply for a permit from the police department. The police department shall investigate the suitability of the premises for the kennel, and if found suitable shall issue said permit. Any permit issued may be revoked at any time, either by the police department or by the city council, whenever it shall be made to appear that the maintenance of said hobby kennel interferes with the rights of others in the enjoyment of their property, peace, health and safety.

**SECTION 23: The following shall be added as NMC 6.10.115**

**6.10.115 Hobby kennel.** Any person wishing to keep four or more adult dogs at a residence shall first obtain a permit for a hobby kennel under NMC 6.05.055.

**SECTION 24: The following shall be added as NMC 8.15.052:**

**8.15.052 Disposition of human remains**

No person shall inter human remains except within a cemetery approved for that purpose.

**SECTION 25: Grace period for previously permitted or conditional uses.** Where an applicant demonstrates that a particular use was a permitted or conditional use on a specific property immediately prior to adoption of this ordinance, but that the use is no longer either a permitted or conditional use on that property due to this ordinance, the applicant may establish the use as either a permitted or conditional use, as provided in the prior code, provided the use is legally commenced prior to January 1, 2018.

## FINDINGS

### I. Applicable State Statutes

#### A. ORS 97.460 Requirements for establishment of cemetery or burial park.

*(1) A person may not lay out, open up or use any property for cemetery or burial park purposes unless the person:*

*(a) Is the owner of the property;*

*(b) Has the written consent of the planning commission of the county or city having jurisdiction under ORS 92.042 or, if there is no such commission in such county or city, the governing body of such county or city;*

*(c) Agrees to maintain records of the disposition of human remains on the property as required by the planning commission or governing body of the county or city having jurisdiction under ORS 92.042; and*

*(d) Agrees to disclose the disposition of human remains upon sale of the property. Failure to disclose the disposition of human remains does not invalidate the sale of the property.*

*(2) A planning commission of a county or city or, if there is no planning commission in a county or city, the governing body of the county or city, shall provide to the State Mortuary and Cemetery Board a list of the requirements for laying out, opening up or using property in the county or city for cemetery or burial park purposes.*

**Finding:** The amendment requires a conditional use permit for any cemetery. Conditional use permits require planning commission approval, thus meeting the requirement above.

#### B. ORS 197.665-197.667

##### *197.665 Locations of residential homes*

*(1) Residential homes shall be a permitted use in:*

*(a) Any residential zone, including a residential zone which allows a single-family dwelling; and*

*(b) Any commercial zone which allows a single-family dwelling.*

*(2) A city or county may not impose any zoning requirement on the establishment and maintenance of a residential home in a zone described in subsection (1) of this section that is more restrictive than a zoning requirement imposed on a single-family dwelling in the same zone.*

*(3) A city or county may:*

*(a) Allow a residential home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;*

*(b) Impose zoning requirements on the establishment of a residential home in areas described in paragraph (a) of this subsection, provided that these requirements are no*

*more restrictive than those imposed on other nonfarm single-family dwellings in the same zone; and*

*(c) Allow a division of land for a residential home in an exclusive farm use zone only as described in ORS 215.263 (9).*

*197.667 - Location of residential facility; application and supporting documentation*

*(1) A residential facility shall be a permitted use in any zone where multifamily residential uses are a permitted use.*

*(2) A residential facility shall be a conditional use in any zone where multifamily residential uses are a conditional use.*

*(3) A city or county may allow a residential facility in a residential zone other than those zones described in subsections (1) and (2) of this section, including a zone where a single-family dwelling is allowed.*

*(4) A city or county may require an applicant proposing to site a residential facility within its jurisdiction to supply the city or county with a copy of the entire application and supporting documentation for state licensing of the facility, except for information which is exempt from public disclosure under ORS 192.410 to 192.505. However, cities and counties shall not require independent proof of the same conditions that have been required by the Department of Human Services under ORS 418.205 to 418.327 for licensing of a residential facility.*

**Finding:** The amendment allows residential care home in residential and commercial zones that allow a single family dwelling on the same terms. The amendment also allows residential care facilities as a permitted or conditional use where multi-family residential uses are a permitted or conditional use.

**C. 657A.440 Application of zoning ordinances to registered or certified family child care homes.**

*(1) A registered or certified family child care home shall be considered a residential use of property for zoning purposes. The registered or certified family child care home shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. A city or county may not enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a registered or certified family child care home.*

*(2) A city or county may impose zoning conditions on the establishment and maintenance of a registered or certified family child care home in an area zoned for residential or commercial use if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone.*

**Finding:** The amendment allows family child care homes in residential and commercial zones under the same terms as residential dwellings.

## **II. Applicable Federal Law**

## Religious Land Use and Institutionalized Persons Act (RLUIPA)

*RLUIPA prohibits zoning and landmarking laws that:*

- (1) treat churches or other religious assemblies or institutions on less than equal terms with nonreligious institutions;*
- (2) discriminate against any assemblies or institutions on the basis of religion or religious denomination;*
- (3) totally exclude religious assemblies from a jurisdiction; or*
- (4) unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.*

**Finding:** The changes remove references from the development code that could be construed as not complying with RLUIPA. For example, religious institutions and places of worship are allowed in zones where similar non-religious assemblies are allowed and upon the same terms.

### III. Statewide Planning Goals

#### *Goal 2, Part I*

*\*\*\*All land-use plans and implementation ordinances shall be adopted by the governing body after public hearing and shall be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances, in accord with a schedule set forth in the plan. Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances \*\*\*.*

**Finding:** The changes revise the zoning use tables to take into account changes in circumstances. Public review opportunities have been given through a public workshop, a survey, and public hearings.

### IV. Newberg Comprehensive Plan

#### *III. PLAN CLASSIFICATIONS*

*For the purpose of evaluating and eventually implementing the proposed Comprehensive Plan, descriptions of land use classifications are essential. Explanations of the map designations are as follows: {list of plan classifications}*

**Finding:** The amendment makes certain changes that better match the list of permitted and conditional uses in each zone with the purpose of that plan classification and zoning district. For example, the amendment would no longer allow drag strips in residential zones. Retail food production would be allowed in commercial zones as long as it is in keeping with the commercial nature of that zone.

**V. Conclusion:** The proposed development code amendments meet the applicable requirements of state law, state rules, the Statewide Planning Goals, and the Newberg Comprehensive Plan, and should be approved.

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