



CITY COUNCIL AGENDA
MAY 4, 2015, 7:00 PM
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)

Mission Statement

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

Vision Statement

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

I. CALL MEETING TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. CITY MANAGER'S REPORT

V. PUBLIC COMMENTS

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

VI. CONSENT CALENDAR

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| 1. Approve Minutes from April 20, 2015 | Pages 1-3 |
| 2. February Financial Report | Pages 4-14 |

VII. PUBLIC HEARING

- | | |
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| 1. Ordinance 2015-2782, Amend the Newberg Development Code regarding temporary and portable signs. Open and continue to a date certain of July 6, 2015. | Page 15 |
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VIII. CONTINUED BUSINESS

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| 1. Motion to withdraw from mediation on the Urban Growth Boundary Expansion (UGB) | Pages 16-17 |
| 2. Resolution 2015-3189, A resolution to withdraw Newberg's current UGB/EOA application from Department of Land Conservation and Development | Pages 18-66 |

IV. NEW BUSINESS

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|---|-------------|
| 1. Ordinance 2015-2781, An ordinance amending the Uniform Nuisance Abatement Procedure in Newberg Municipal Code § 8.15.170 | Pages 67-76 |
| 2. Ordinance 2015-2783, An ordinance authorizing Full Faith and Credit refunding bonds | Pages 77-81 |

Agenda continued on next page

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.

3. Resolution 2015-3186, Direct the Newberg Affordable Housing Commission Pages 82-101 to return with recommendations to amend Resolution No. 2013-2988 establishing policies and procedures for administration of the Newberg Affordable Housing Trust Fund (NAHTF)

4. Resolution 2015-3187, Authorize the City Manager to contract with Pages 102-106 Mid-Willamette Valley Council of Governments to administer Newberg's Affordable Housing Trust Fund program.

X. COUNCIL BUSINESS

XI. EXECUTIVE SESSION

1. Pursuant to ORS 192.660 (2) (e) relating to a real property transaction

XII. ADJOURNMENT

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Recorder's Office of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than two business days prior to the meeting. To request these arrangements, please contact the City Recorder at (503) 537-1283. For TTY services please dial 711.

Council accepts comments on agenda items during the meeting. Fill out a form identifying the item you wish to speak on prior to the agenda item beginning and turn it into the City Recorder. Speakers who wish the Council to consider written material are encouraged to submit written information in writing by 12:00 p.m. (noon) the day of the meeting.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 4, 2015

Order ___ No.	Ordinance ___ No.	Resolution ___ No.	Motion <u>XX</u>	Information ___
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SUBJECT: Minutes

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

RECOMMENDATION:

Approve City Council minutes from April 20, 2015.

**NEWBERG CITY COUNCIL MINUTES
APRIL 20, 2015, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)**

CALL MEETING TO ORDER

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

ROLL CALL

Members Present: Mayor Bob Andrews Mike Corey Tony Rourke
Scott Essin Stephen McKinney Lesley Woodruff
Denise Bacon

Staff Present: Jacque Betz, City Manager Truman Stone, City Attorney
Sue Ryan, City Recorder Matt Zook, Finance Director
Jay Harris, Public Works Director Doug Rux, Community Development Director
Jessica Pelz, Associate Planner

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was performed.

PRESENTATIONS: Mayor Andrews read the proclamation declaring May 4, 2015, as Newberg High School Varsity Cheerleading Day and presented it to the team.

MOTION: Bacon/Rourke moved to proclaim May 4, 2015 as Newberg High School Varsity Cheerleading Day. Motion carried (7 Yes/ 0 No).

CITY MANAGER'S REPORT: CM Betz reminded the Council of their homework for the visionary session which needed to be done by Wednesday. There had been a potential buyer for the W. Illinois Street property, but it was not a strong buyer and staff decided to put it back on the market. Staff was still working on a proposal for the Butler property.

PUBLIC COMMENTS: Greg Leo and Alice Norris, members of the Willamette Falls Heritage Area Coalition, spoke about the creation of the Willamette Falls National Heritage Area. This was a focus on the history of the end of the Oregon Trail as well as the history of the beginning of industry in the American West. To create a heritage area, all the cities in the boundary had to agree they wanted it to happen. Ms. Norris gave Council a sample letter of support and a resolution. She then explained what a national heritage area was and the benefits of creating a heritage area, which included economic development based on tourism. Mr. Leo said this would not cost the City of Newberg any money and it did not affect any land use designations. The advantage was it put the City on the National Park Service map of heritage areas and would tell the story of the river, falls, and Native Americans in an integrated way. He asked that the Council pass a resolution in support.

There was discussion on the cities that would be asked for support, boundaries of the area, possible future expenses, and coordinating with other local heritage groups.

CONSENT CALENDAR:

MOTION: Rourke/Woodruff moved to accept the Consent Calendar, including the April 6, 2015, meeting minutes and Resolution 2015-3185. Motion carried (7 Yes/ 0 No).

PUBLIC HEARING: Resolution 2015-3182, Adoption of Supplemental Budget for FY 2014-2015:

Mayor Andrews opened the public hearing at 7:25 p.m. He called for any abstentions, bias, ex-parte contacts, conflicts of interest, or objections to jurisdiction. There were none.

FD Zook presented the staff report. He said the Council previously approved the purchase and sale of property for a Public Works yard which was the primary driver for the supplemental budget. There were also a few other items in the

supplemental budget, such as debt service payment for the Wastewater Treatment Plant expansion project and project overages. He explained the funding for the Public Works yard.

There was no public testimony. Mayor Andrews closed the public testimony portion of the hearing at 7:29 p.m.

FD Zook said the staff recommendation was to approve the resolution.

Mayor Andrews closed the public hearing at 7:30 p.m.

Deliberations:

There was discussion on the property values for the property that was being bought and the property being sold.

MOTION: McKinney/Corey moved to approve Resolution 2015-3182. Motion carried (7 Yes/ 0 No).

COUNCIL BUSINESS: The Council discussed scheduling a tour of the Newberg-Dundee Bypass site with the Oregon Department of Transportation. There was consensus to hold a tour on a Friday afternoon in June.

Councilor Rourke brought up the issue of the forward looking calendar. He said citizens wanted more time to prepare information they might want to bring to a Council meeting and thought the agenda needed to be available sooner. He suggested making the forward looking calendar available to the public.

CM Betz said the forward looking calendar was an internal planning document staff used to forecast what was going to come before Council and it changed frequently. A simpler forward looking calendar could be done for the public that targeted the possible subjects coming before the Council. Some items would not be ready for public release. It should give people enough time to gather factual information to bring to meetings. She would work with the City Recorder and prepare a forward looking calendar for the next meeting.

Mayor Andrews suggested staff prepare a letter of support and resolution for the Willamette Falls National Heritage Area.

There was consensus to have staff prepare the items for the May 18 Council meeting.

EXECUTIVE SESSION: Executive session pursuant to ORS 192.660 (2) (h) Rights and Duties regarding litigation likely to be filed – Update on UGB Mediation. The Council entered Executive Session at 8:10 p.m. The Council re-entered open session at 9:20 p.m.

ADJOURNMENT: The meeting was adjourned at 9:21 p.m.

ADOPTED by the Newberg City Council this 4th day of May, 2015.

Sue Ryan, City Recorder

ATTESTED by the Mayor this ____ day of May, 2015.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 4, 2015

Order ___ No.	Ordinance ___ No.	Resolution ___ No.	Motion ___	Information <u>XX</u>
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**SUBJECT: Newberg Financial Report for
February 2015**

**Contact Person (Preparer) for this
Item: Matt Zook
Dept.: Finance**

EXECUTIVE SUMMARY:

Please see attached for the reports for the month of February 2015. These reports were delayed two weeks due to the preparation of the fiscal year 2015-16 Proposed Budget. March 2015 financial reports will be included in Council packets on the second meeting of May. These are provided for your information only and no action is required.

The primary item to note is the actual beginning fund balances have been posted in February as a result of the completion of the fiscal year 2013-14 audit. For the most part, the beginning fund balances were higher than budgeted. A few funds had beginning fund balances lower than budgeted. The Wastewater Financed CIP and Water System Development funds have deficit fund balances of \$(5,104,064) and \$(54,054), respectively. The deficit in the Wastewater Financed CIP Fund is due to the timing of loan drawdown requests from the Clean Water State Revolving Loan Fund. Both deficits are expected to be eliminated during fiscal year 2014-15 with the fulfillment of funding requests.

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF FEB 2015	2014-15 YTD	Current YTD Compare to Budget 67%	2013-14 PRIOR YTD
City Budget Totals					
Total Beg Fund Balance	\$ 31,461,724	\$ 28,130,941	\$ 28,130,941	89%	31,493,673
Total Revenues	67,644,784	7,401,593	46,058,550	68%	36,866,566
Total Beg Fund Bal & Revenues	99,106,508	35,532,534	74,189,491		68,360,239
Total Expenses	72,044,999	3,177,886	36,285,975	50%	35,107,632
Total Contingencies / Reserves	27,061,509	-	-	0%	-
Total Exp & Contingen / Reserves	99,106,508	3,177,886	36,285,975	37%	35,107,632
Total Monthly Activity Net Gain / (Loss)		\$ 32,354,648			
Total Ending Fund Balance			<u>\$ 37,903,516</u>		33,252,606

City Services

General Fund

Beg Fund Balance	\$ 2,249,309	\$ 2,504,196	\$ 2,504,196	111%	2,835,743
Revenues					
General Government	100,000.00	-	15,155.00	15%	17,500.00
Municipal Court	31,815	2,618	18,417	58%	22,006
Police	1,152,361	90,418	724,315	63%	789,389
Fire	307,000	68,236	191,842	62%	107,981
Communications	55,994	-	42,462	76%	40,428
Library	142,712	3,183	92,150	65%	76,102
Planning	498,052	39,070	322,849	65%	158,106
Property Taxes	6,714,209	-	6,345,179	95%	6,230,384
Other Taxes	696,216	6,651	364,741	52%	301,392
Franchise Fees	1,508,097	334,307	425,834	28%	467,241
Intergovernmental	1,180,653	72,350	779,426	66%	739,765
Miscellaneous	2,500	(20)	1,479	59%	205
Interest	7,070	1,410	6,491	92%	6,489
Transfers	-	-	-	0%	-
Revenue Total	12,396,679	618,225	9,330,339	75%	8,956,987
Expenses					
General Government	543,314	22,887	236,588	44%	239,040
Municipal Court	364,698	25,037	211,884	58%	170,963
Police	5,682,181	427,458	3,638,184	64%	3,637,379
Fire	3,354,089	315,482	2,186,556	65%	2,140,210
Communications	1,041,640	71,339	691,765	66%	663,696
Library	1,182,802	87,588	794,694	67%	797,228
Planning	586,154	35,613	374,996	64%	429,755
Transfers	39,068	16,412	16,412	42%	-
Contingency	752,042	-	-	0%	-
Unappropriated Ending Balance	1,100,000	-	-	0%	-
Total Expenses	14,645,988	1,001,817	8,151,078	56%	8,078,271
Monthly Activity Net Gain / (Loss)		\$ 2,120,603			
Ending Fund Balance			<u>\$ 3,683,457</u>		3,714,458

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF FEB 2015	2014-15 YTD	Current YTD Compare to Budget 67%	2013-14 PRIOR YTD
<u>Public Safety Fee</u>					
Beg Fund Balance	\$ 156,030	\$ 178,122	\$ 178,122	114%	196,153
Revenues	532,646	39,704	223,141	42%	191,619
Expenses	507,191	33,947	301,927	60%	225,068
Contingencies / Reserves	181,485	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 183,880			
Ending Fund Balance			\$ 99,336		162,704
<u>EMS</u>					
Beg Fund Balance	\$ 510,066	\$ 606,111	\$ 606,111	119%	457,509
Revenues	1,609,000	174,389	1,314,597	82%	1,020,005
Expenses	1,829,741	162,832	1,232,295	67%	892,413
Contingencies / Reserves	289,325	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 617,668			
Ending Fund Balance			\$ 688,413		585,101
<u>911 Emergency</u>					
Beg Fund Balance	\$ 57,640	\$ 62,606	\$ 62,606	109%	89,061
Revenues	196,250	4	99,141	51%	99,351
Expenses	223,409	17,341	157,066	70%	148,581
Contingencies / Reserves	30,481	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 45,269			
Ending Fund Balance			\$ 4,682		39,830
<u>Civil Forfeiture</u>					
Beg Fund Balance	\$ 45	\$ 15,974	\$ 15,974	35498%	-
Revenues	5,000	7	3,598	72%	15,950
Expenses	5,045	-	-	0%	-
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 15,981			
Ending Fund Balance			\$ 19,572		15,950
<u>Library Gift & Memorial</u>					
Beg Fund Balance	\$ 30,062	\$ 86,809	\$ 86,809	289%	92,623
Revenues	139,100	580	37,764	27%	119,095
Expenses	135,500	3,174	30,343	22%	88,124
Contingencies / Reserves	33,662	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 84,215			
Ending Fund Balance			\$ 94,230		123,594
<u>Building Inspection</u>					
Beg Fund Balance	\$ 296,733	\$ 387,961	\$ 387,961	131%	339,929
Revenues	384,750	85,519	458,395	119%	257,099
Expenses	427,956	34,283	275,798	64%	240,455
Contingencies / Reserves	253,527	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 439,197			
Ending Fund Balance			\$ 570,558		356,573

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF FEB 2015	2014-15 YTD	Current YTD Compare to Budget 67%	2013-14 PRIOR YTD
<u>Streets (Operating)</u>					
Beg Fund Balance	\$ 638,391	\$ 668,873	\$ 668,873	105%	689,103
Revenues	1,350,500	128,541	842,989	62%	814,512
Expenses	1,224,719	75,057	776,984	63%	964,758
Contingencies / Reserves	764,172	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 722,357			
Ending Fund Balance			\$ 734,877		538,858
<u>Water (Operating)</u>					
Beg Fund Balance	\$ 2,741,790	\$ 3,127,505	\$ 3,127,505	114%	4,783,887
Revenues	4,879,371	307,371	3,706,021	76%	3,415,420
Expenses	4,928,586	1,048,817	3,697,258	75%	5,499,950
Contingencies / Reserves	2,692,575	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 2,386,060			
Ending Fund Balance			\$ 3,136,269		2,699,357
<u>Wastewater (Operating)</u>					
Beg Fund Balance	\$ 4,188,939	\$ 4,576,380	\$ 4,576,380	109%	7,576,184
Revenues	7,030,230	602,492	4,270,140	61%	4,444,128
Expenses	6,920,955	286,429	4,524,130	65%	7,941,838
Contingencies / Reserves	4,298,214	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 4,892,444			
Ending Fund Balance			\$ 4,322,390		4,078,473
<u>Stormwater (Operating)</u>					
Beg Fund Balance	\$ 236,855	\$ 430,824	\$ 430,824	182%	1,004,730
Revenues	1,097,015	99,535	778,819	71%	648,722
Expenses	1,036,113	67,063	573,945	55%	1,385,647
Contingencies / Reserves	297,757	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 463,295			
Ending Fund Balance			\$ 635,698		267,804

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF FEB 2015	2014-15 YTD	Current YTD Compare to Budget 67%	2013-14 PRIOR YTD
<u>Administrative Support</u>					
Beg Fund Balance	\$ 740,869	\$ 802,648	\$ 802,648	108%	684,851
Revenues	3,627,586	304,408	2,429,087	67%	2,224,246
Expenses					
City Manager	287,592	19,793	174,893	61%	179,847
Human Resources	145,874	45,546	122,765	84%	101,582
City Recorder	150,860	7,337	74,943	50%	98,401
Emergency Management	-	(38)	-	0%	343
Finance	519,586	42,370	381,485	73%	344,471
Gen Office(Postage/Phones)	155,000	11,187	89,660	58%	86,425
Utility Billing	287,939	18,469	168,738	59%	142,810
Information Technology	882,357	54,949	436,551	49%	367,168
Legal	431,011	36,414	288,318	67%	254,349
Fleet Maintenance	168,423	15,397	105,769	63%	105,772
Facilities Repair/Replacement	343,990	39,042	248,240	72%	233,362
Insurance	295,000	1,651	245,834	83%	248,648
Transfers	500,000	-	500,000	100%	-
Contingencies / Reserves	200,823	-	-	0%	-
Total Expenses	4,368,455	292,120	2,837,195	65%	2,163,180
Monthly Activity Net Gain / (Loss)		\$ 814,936			
Ending Fund Balance			\$ 394,540		745,917

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF FEB 2015	2014-15 YTD	Current YTD Compare to Budget 67%	2013-14 PRIOR YTD
Capital Improvement Projects					
<u>Streets CIP's</u>					
Beg Fund Balance	\$ 158,192	\$ 163,489	\$ 163,489	0%	109,838
Revenues	1,180,301	3,316	317,393	27%	599,585
Expenses	1,180,000	3,254	316,903	27%	1,342,082
Contingencies / Reserves	158,493	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 163,551			
Ending Fund Balance			\$ 163,979		(632,659)
<u>Water / Wastewater / Stormwater CIP's</u>					
Beg Fund Balance	\$ -	\$ 451,461	\$ 451,461	0%	-
Revenues	4,705,000	157,120	5,099,158	108%	328,155
Expenses	4,705,000	68,435	2,330,370	50%	328,155
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 540,145			
Ending Fund Balance			\$ 3,220,249		-
<u>Wastewater Financed CIP's</u>					
Beg Fund Balance	\$ -	\$ (5,104,064)	\$ (5,104,064)	0%	-
Revenues	21,088,728	3,740,637	11,007,312	52%	1,172,764
Expenses	21,088,728	641	6,264,421	30%	2,435,540
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (1,364,068)			
Ending Fund Balance			\$ (361,172)		(1,262,776)

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF FEB 2015	2014-15 YTD	Current YTD Compare to Budget 67%	2013-14 PRIOR YTD
<u>Street SDC</u>					
Beg Fund Balance	\$ 2,207,054	\$ 2,225,545	\$ 2,225,545	101%	2,534,551
Revenues	762,500	33,910	461,413	61%	181,475
Expenses	1,005,000	1,337	142,430	14%	15,960
Contingencies / Reserves	1,964,554	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 2,258,118			
Ending Fund Balance			\$ 2,544,527		2,700,066
<u>Water SDC</u>					
Beg Fund Balance	\$ 298,188	\$ (54,053)	\$ (54,053)	-18%	468,918
Revenues	1,586,402	889,667	1,193,239	75%	1,052,860
Expenses	1,881,352	1,327	1,378,456	73%	889,431
Contingencies / Reserves	3,238	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 834,287			
Ending Fund Balance			\$ (239,269)		632,347
<u>Wastewater SDC</u>					
Beg Fund Balance	\$ 3,219,421	\$ 3,176,180	\$ 3,176,180	99%	1,794,112
Revenues	691,800	67,852	1,036,324	150%	1,653,977
Expenses	1,679,779	660	447,656	27%	315,758
Contingencies / Reserves	2,231,442	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 3,243,371			
Ending Fund Balance			\$ 3,764,847		3,132,331
<u>Stormwater SDC</u>					
Beg Fund Balance	\$ 166,722	\$ 148,161	\$ 148,161	89%	351,007
Revenues	67,000	1,836	26,801	40%	18,125
Expenses	102,500	284	1,137	1%	99,949
Contingencies / Reserves	131,222	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 149,712			
Ending Fund Balance			\$ 173,824		269,183

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF FEB 2015	2014-15 YTD	Current YTD Compare to Budget 67%	2013-14 PRIOR YTD
Debt					
<u>Debt Service (General Op)</u>					
Beg Fund Balance	\$ 197,349	\$ 206,903	\$ 206,903	105%	195,259
Revenues	892,667	17,257	764,013	86%	757,238
Expenses	889,332	-	537,566	60%	527,948
Contingencies / Reserves	200,684	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 224,160			
Ending Fund Balance			\$ 433,351		424,550
<u>City Hall</u>					
Beg Fund Balance	\$ 545,937	\$ 548,803	\$ 548,803	101%	576,115
Revenues	89,500	12,570	68,711	77%	27,879
Expenses	108,342	-	76,977	71%	71,863
Contingencies / Reserves	-	-	-	0%	-
Unappropriated Ending Balance	527,095	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 561,373			
Ending Fund Balance			\$ 540,537		532,131

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF FEB 2015	2014-15 YTD	Current YTD Compare to Budget 67%	2013-14 PRIOR YTD
Reserves					
<u>Water Replacement Reserve</u>					
Beg Fund Balance	\$ 4,709,677	\$ 4,782,060	\$ 4,782,060	102%	2,961,007
Revenues	615,000	2,034	616,652	100%	2,310,317
Expenses	707,500	1,386	39,168	6%	85,590
Contingencies / Reserves	4,617,177	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 4,782,707			
Ending Fund Balance			\$ 5,359,544		5,185,734
<u>Wastewater Replacement Reserve</u>					
Beg Fund Balance	\$ 5,510,301	\$ 5,365,101	\$ 5,365,101	97%	1,234,745
Revenues	1,015,000	1,784	1,020,174	101%	4,713,577
Expenses	1,468,500	14,252	1,539,556	105%	63,496
Contingencies / Reserves	5,056,801	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 5,352,634			
Ending Fund Balance			\$ 4,845,719		5,884,826
<u>Stormwater Replacement Reserve</u>					
Beg Fund Balance	\$ 811,500	\$ 812,069	\$ 812,069	100%	-
Revenues	52,500	328	52,556	100%	810,871
Expenses	217,500	572	1,572	1%	-
Contingencies / Reserves	646,500	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 811,825			
Ending Fund Balance			\$ 863,053		810,871

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF FEB 2015	2014-15 YTD	Current YTD Compare to Budget 67%	2013-14 PRIOR YTD
<u>Vehicle / Equipment Replacement</u>					
Beg Fund Balance	\$ 1,133,710	\$ 1,206,430	\$ 1,206,430	106%	1,658,968
Revenues	\$ 1,242,464	\$ 44,584	\$ 626,165	50%	781,982
Expenses					
General Government	-	-	-	0%	-
City Manager's Office	-	-	-	0%	-
Human Resources	-	-	-	0%	-
City Recorder/Clerk	-	-	-	0%	-
Finance	-	-	-	0%	-
Information Technology	384,172	(0)	164,397	43%	532,847
Legal	-	-	-	0%	-
Municipal Court	-	-	-	0%	-
Police	123,017	-	84,484	69%	61,130
Fire	543,111	1,085	117,474	22%	-
Communications	15,000	-	6,149	41%	1,124
Library	-	-	-	0%	-
Planning	11,548	-	11,137	96%	-
Building	-	-	-	0%	-
PW Administration	162,551	-	108,213	67%	496,974
Fleet Maintenance	12,500	138	392	0%	10
Facilities Repair/Replacement	75,000	1,430	7,643	10%	-
Contingencies / Reserves	1,049,275	-	-	0%	-
Total Expenses	2,376,174	2,653	499,889	21%	1,092,085
Monthly Activity Net Gain / (Loss)		\$ 1,248,361			
Ending Fund Balance			\$ 1,332,705		1,348,865
<u>Fire & EMS Equip Fee</u>					
Beg Fund Balance	\$ 100,371	\$ 110,942	\$ 110,942	111%	174,453
Revenues	141,000	11,944	96,095	68%	137,363
Expenses	241,371	-	11,179	5%	49,766
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 122,885			
Ending Fund Balance			\$ 195,858		262,050

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF FEB 2015	2014-15 YTD	Current YTD Compare to Budget 67%	2013-14 PRIOR YTD
Community Projects					
<u>Cable TV Trust</u>					
Beg Fund Balance	\$ 26,895	\$ 41,942	\$ 41,942	156%	41,744
Revenues	150	17	126	84%	133
Expenses	15,000	3,926	3,926	26%	-
Contingencies / Reserves	12,045	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 38,034			
Ending Fund Balance			\$ 38,143		41,877
<u>Economic Development</u>					
Beg Fund Balance	\$ 529,678	\$ 601,964	\$ 601,964	114%	643,183
Revenues	266,645	55,964	178,387	67%	113,131
Expenses	514,429	56,280	136,752	27%	161,724
Contingencies / Reserves	281,894	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 601,648			
Ending Fund Balance			\$ 643,599		594,590

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 4, 2015

Order ___ Ordinance XX Resolution ___ Motion XX Information ___
No. No. 2015-2782 No.

SUBJECT: Amend the Newberg Development Code regarding temporary and portable signs

Contact Person (Preparer) for this Motion: Steve Olson, Associate Planner
Dept.: Community Development
File No.: DCA-14-001

HEARING TYPE: LEGISLATIVE QUASI-JUDICIAL NOT APPLICABLE

RECOMMENDATION:

Make a motion to open and continue the hearing regarding the proposed Development Code amendment for temporary and portable signs to July 6, 2015.

EXECUTIVE SUMMARY:

The Planning Commission held several hearings about a potential Development Code amendment for temporary and portable signs, and on February 12, 2015 they adopted Resolution 2015-305, which includes their recommended changes to the Development Code.

One of their recommended changes was to allow portable signs in the public right-of way outside of the downtown area. Most of the public right of way within city limits is under City jurisdiction, but some of the right of way is under State jurisdiction and a small portion is under County jurisdiction. Staff needs additional time to check in with Yamhill County and the Oregon Department of Transportation regarding the placement of portable signs in the right of way.

FISCAL IMPACT: No fiscal impact is expected.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

The city needs time to coordinate with Yamhill County and ODOT regarding portable signs in the public right of way as they would be affected by the proposed change to the Development Code.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 4, 2015

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

SUBJECT: Direct staff to withdraw from South Industrial UGB amendment mediation process and take Resolution No. 2014-3129 off the table for a vote (now Resolution No. 2015-3189)

**Contact Person (Preparer) for this Motion: Jessica Pelz, AICP
 Dept.: Community Development
 File No.: UGB-09-001**

RECOMMENDATION: Staff recommends City Council take two actions:

1. Direct staff to withdraw from the South Industrial Urban Growth Boundary amendment mediation process.
2. Take Resolution No. 2014-3129 off the table for a vote by the City Council (note: Resolution No. 2014-3129 has been renumbered as Resolution No. 2015-3189).

EXECUTIVE SUMMARY: City Council directed staff to enter into mediation with the Department of Land Conservation and Development (DLCD) and objectors to the South Industrial Urban Growth Boundary (UGB) amendment on May 5, 2014. The mediation process was facilitated by the Oregon Consensus program, and our chosen mediator for the UGB process was Sam Imperati, J.D. After a long process to complete a contract and confidentiality agreement amongst all parties, mediation began in early 2015. The city mediation team (Jessica Pelz, Truman Stone, Phil Smith, Tim Ramis) attended two mediation sessions with DLCD representatives and objectors to the city’s industrial UGB proposal – one on February 12, 2015, and one on March 25, 2015. Although progress was made during and between the sessions, consensus has ultimately not been reached among the parties. The parties to the mediation process are bound by the confidentiality agreement and cannot discuss actual specific details of the discussion. However, we can give an overview of the process and the options for moving forward.

Consensus was ultimately reached on acreage but ultimately not reached on the location of an industrial UGB amendment or on certain aspects of the city’s Economic Opportunities Analysis. The mediation team’s analysis is that we are unlikely to reach consensus and a mediated settlement through this process, and the city’s UGB strategy team concurs with that assessment. The city’s UGB strategy team is composed of the following members: City Councilor Denise Bacon, City Councilor Lesley Woodruff, Planning Commissioner Phil Smith, Planning Commissioner Cathy Stuhr, Attorney Tim Ramis, City Attorney Truman Stone, City Manager Jacque Betz, Community Development Director Doug Rux, Associate Planner Steve Olson, and Associate Planner Jessica Pelz. The UGB strategy team recommends that City Council should direct staff to withdraw from the mediation process.

On May 5, 2014, City Council tabled Resolution No. 2014-3129, which would authorize withdrawal of our UGB application from DLCD (which also includes the revised Economic Opportunities Analysis (EOA) and related amendments), pending the outcome of the mediation process. If Council makes a motion directing staff to withdraw from the mediation process, the second motion should be to bring Resolution No. 2014-3129 from the table for a vote. [Note: Resolution No. 2014-3129 has been updated to reflect the 2015 calendar year, and is now referred to as Resolution No. 2015-3189]. If the Council adopts Resolution No. 2015-3189, we will then need to repeal Ordinance No. 2013-2761, which adopted the EOA, UGB, and related amendments. Staff would place the repeal of the Ordinance on the forward

looking calendar for an upcoming meeting.

FISCAL IMPACT: The city has spent a considerable amount of time and money on the UGB process thus far, and would need to allocate additional funding were mediation to continue. However, withdrawing from the mediation process at this point would allow the city to regroup and make a plan for the future with adequate funding allocated through the budget process.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): The UGB process is related to three Council goals: 1) Create a clear vision for the future of Newberg, maintaining its small town feel; 4) Foster and encourage economic development in the community; and 7) Manage and operate the City government in an efficient and effective manner. The city is required to plan for its future, and even if we do withdraw from this current process, we would regroup and work with City Council on the best path forward to meet the city's goals.

Sample Motion to Withdraw from Mediation:

I move that the City terminate the UGB Mediation process, and that the Council direct staff to take the steps necessary to accomplish this directive.

Sample Motion to take from the table, prior resolution:

I move that the Council take from the table, Resolution 2014-3129, which has been tabled during the mediation process.

Sample Motion to Amend Resolution:

I move that Resolution 2014-3129 be amended by re-numbering the resolution from 2014-3129 to **2015-3189** so as to be consistent with the City standards for numbering of resolutions.

Sample Motion to Adopt Resolution:

I move that the City Council adopt Resolution 2014-3129 as amended to be renumbered as Resolution 2015-3189.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 4, 2015

Order ___	Ordinance ___	Resolution <u>XX</u>	Motion ___	Information ___
No.	No.	No. 2015-3189		

SUBJECT: A Resolution to withdraw Newberg’s current UGB/EOA application from DLCD

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

RECOMMENDATION:

Adopt Resolution No. 2015-3189, authorizing withdrawal of Newberg’s urban growth boundary and economic opportunities analysis application from the Department of Land Conservation and Development (DLCD) review process.

EXECUTIVE SUMMARY:

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

Background & Process Summary

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

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

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

This ruling gave the city the ability to craft specific site suitability characteristics for industrial land in accordance with the rules. This is extremely important to comprehensive planning as Goal 14 (Urbanization, which governs UGB expansions) allows local governments to specify characteristics for land to be suitable for an identified need. If this were not the case, we would be required to take in land only according to the Goal 14 factors, which would require us to always take in exception land and marginal land, which in most cases would be unsuitable for industrial or commercial land due to size, location, topography, access, etc. The city's revised EOA contains Newberg's site suitability characteristics along with cited research meant to address the court ruling on "typical of the use" and "meaningful connection". The EOA is a fundamentally important document to allow the city to move forward with meeting Goal 9 (Economy) and to eventually expand the UGB for employment land.

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

FISCAL IMPACT:

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

STRATEGIC ASSESSMENT:

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



RESOLUTION No. 2015-3189

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

RECITALS:

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

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Staff is hereby authorized to withdraw Newberg's application for the south industrial urban growth

boundary amendment, revised Economic Opportunities Analysis, and related amendments from the Department of Land Conservation and Development.

2. Exhibit “A”, DLCD second supplemental report to LCDC, dated March 7, 2014, and Exhibit “B”, timeline of events related to the Newberg South Industrial UGB Amendment, dated March 27, 2014, are hereby attached and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 5, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of April, 2015.

Sue Ryan, City Recorder

ATTEST by the Mayor this ____ day of May, 2015.

Bob Andrews, Mayor



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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Salem, Oregon 97301-2540
Phone: (503) 373-0050
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www.oregon.gov/LCD



March 7, 2014

TO: Land Conservation and Development Commission

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

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

CITY OF NEWBERG – URBAN GROWTH BOUNDARY AMENDMENT SECOND SUPPLEMENTAL REPORT

I. SUMMARY

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

A. Staff Contact Information

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

B. Recommendation

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

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

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

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

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

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

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

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

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

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

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

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

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

II. RECORD

The materials before the commission are:

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

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

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

III. SITE CHARACTERISITCS

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

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

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

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

For employment land, a local government specifies site suitability characteristics during completion of an EOA. The definition of a “site characteristic” as it applies to employment land is found in OAR 660-009-0005(11):

“‘Site Characteristics’ means the attributes of a site *necessary for a particular industrial or other employment use to operate*. Site characteristics include, but are not limited to, a minimum acreage or site configuration including shape and topography, visibility, specific types or levels of public facilities, services or energy infrastructure, or proximity to a particular transportation or freight facility such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes.” (Emphasis added.)

LUBA and the Court of Appeals both interpreted how strictly the term “necessary” should be applied in the determination of site characteristics. The Court of Appeals’ opinion states:

“[W]e agree with LUBA that ‘site characteristics’ need not be ‘indispensable’ to a particular use in order to be ‘necessary for a particular industrial or other employment use to operate.’ The intent of Division 9 is to ensure that there is an ‘adequate supply of land for economic development and employment growth in Oregon,’ OAR 660-009-0000, which is vital to the health, welfare, and prosperity of the state * * *.’ That overriding intent to allow and plan for anticipated economic growth--in part, through the identification of ‘site characteristics’ that make the land ‘suitable’ to meet the needs of anticipated growth--suggests something other than petitioners’ strict ‘indispensability’ test that would take into consideration only those ‘site characteristics’ without which particular industry and employment uses could not operate. Rather, the planning scheme (based on projections and economic trends) suggests, as LUBA adopted, a more pragmatic approach toward accommodating economic growth: That ‘necessary’ site characteristics are those attributes that are *reasonably necessary* to the successful operation of particular industrial or employment uses, in the sense that they bear some *important relationship* to that operation. *Friends of Yamhill County v. City of Newberg*, 240 Or App 738, 747 (2011) (emphasis added).

The Court of Appeals articulated its understanding of the upper boundary of how strictly the term “necessary” should be applied as it interprets the commission’s rule: not as “indispensable,” but rather as “reasonably necessary” in a way that bears some “important relationship” to the particular operation. LUBA, in its opinion, used the term “meaningful connection.”² While neither body addressed the lower boundary in detail, LUBA’s opinion states:

² As noted in the Staff Report, the Court of Appeals’ articulation of “necessary” differed from LUBA’s. See Staff Report at 16-17. Specifically, the Court of Appeals articulates a “necessary” site characteristic as one that is “reasonably necessary” in the sense that it bears an “important relationship” to the operation of the particular use. LUBA characterized “necessary” in a two prong test: whether the site characteristic was “typical” and “meaningfully connected” to the operation of the particular use. While using different terminology, the Court of Appeals notes that the interpretation is essentially the same: “LUBA’s formulation of the relevant inquiry adequately captures the concept of reasonable necessity that is embodied in the rule.” *Friends*, 240 Or App at 747.

“[T]he city’s apparent belief that it can select site characteristics solely to give it sites that will have competitive advantages gives no meaning to the OAR 660-009-0005(11) requirement that a site characteristic must be an ‘attribute’ that is ‘necessary’ for the desired industrial use to ‘operate.’ The city’s exclusive focus on marketing concerns also runs the risk that the city might run afoul of other statewide planning goal and statutory obligations for establishing urban growth boundaries in a way that balances the need to provide adequate land for industrial development and statutory and goal standards for protecting agricultural, forest and other sensitive lands.” *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5, 19-20 (2010) (slip op at 15), *aff’d* 240 Or App 747 (2011).

To summarize, LUBA and the Court of Appeals rejected interpretations of the term “necessary” that would mean “indispensable” (at one end of the spectrum) or simply a “marketing advantage” (at the other). Instead, the appellate bodies believed the commission intended something in between, but still with substance: reasonable, important, and meaningful as related to operational needs.

In its review, the department did not question whether LUBA’s two-pronged definition was appropriate but rather analyzed the submittal and objections with the assumption that a site characteristic is “necessary for a particular industrial or other employment use to operate” if the city demonstrated that LUBA’s two prongs – “typical” and “meaningfully connected” – were satisfied.³ Accordingly, the department’s review focused on whether the city’s findings and conclusions are reasonable and based on substantial evidence, *not* whether it was the only or best application of the rules as interpreted by LUBA and the Court. In several instances, the department found that only one, or neither, component of LUBA’s definition had been demonstrated

However, as discussed at the hearing in February, the commission has the authority to interpret its own rules. Thus, the issue before the commission is whether the city has demonstrated that the challenged site characteristics are “necessary for a particular industrial or other employment use to operate” such that the city can appropriately exclude certain lands from consideration as a UGB expansion area.⁴

³ LUBA articulated the two-part test as follows:

“we believe that site characteristics are properly viewed as attributes that are (1) typical of the industrial or employment use and (2) have some meaningful connection to the operation of the industrial or employment use.” *Friends*, 62 Or LUBA at 19.

⁴ For continuity between reports, the department continues to use the phrase “meaningfully connected” to mean “necessary.”

IV. ISSUES BEFORE THE COMMISSION

The department provided a list of questions to the commission at the February 13, 2014 hearing. The department intended the list to be an inventory of issues raised in objections to the Newberg UGB amendment submittal and in exceptions to the January 23, 2014 DLCD staff report to the commission. The questions and the department's recommended response follow.

1. *Did the city inappropriately exclude land from consideration for a UGB expansion under OAR 660-024-0060(5) due to its interpretation of the definition of "site characteristics"?* (Friends Objection 1; Staff Report at 19-34; Friends Exception 1, Newberg exception at 6-14; Supplemental Report at 4; Newberg response at 4-6; Friends rebuttal at 4-9)

The department concluded that the answer to this question is "yes," for the reasons set forth in the answers to the following subset of questions.

- a. *Did the city demonstrate that the challenged site characteristics are "typical" of a particular use?* (Friends Objection 1; Staff Report at 26; Friends Exception 1; Newberg Exception at 6-10; Newberg response at 7; Friends rebuttal at 4-7; subsection V.A.1 of this report)

The department notes that the city's analysis of what is "typical" was undertaken in response to the first prong of LUBA's two-prong interpretation of "necessary." In the department's view, LUBA included "typical" because OAR 660-009-0015(2) directs cities to identify site needs based in part on site characteristics that are "typical of expected uses." This rule provided LUBA context for interpreting the commission's intent for the term "necessary" in the definition of "site characteristic." As noted in chapter III, the commission need not adopt LUBA's interpretation.

The department found that the submittal includes substantial evidence to demonstrate that most of the site characteristics the city employed are typical of target industrial uses. The department found that the city's study of industrial uses in similar cities in the region adequately described the typical attributes of particular industrial uses in the area because the city chose areas that included Newberg's target industries. The department notes that there are a variety of ways that the term "typical" can be interpreted, and the department found the city's interpretation reasonable. The department concluded that one site characteristic has not been justified as "typical":

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

The department found that "wanting to be a good neighbor and not blending well with residential use do not address the *operational needs* of employment uses. (Emphasis in original.) Staff Report at 24. Notwithstanding the sample of industrial area that showed the observed uses have

less than 25 percent of their boundaries adjacent to residential areas, the department did not find that the city demonstrated complaint avoidance to be an operational need of industry.

- b. *Did the city demonstrate that the challenged site characteristics are “meaningfully connected” to a particular use? (Friends Objection 1; Staff Report at 19-34; Newberg exception at 7; Newberg response at 4-6, 7; Friends rebuttal at 7-9)*

The department concluded that the city has not demonstrated that most of the site characteristics it employed are meaningfully connected to a particular use. This conclusion was based on the city’s method of defining required site characteristics, which began with general industry operational needs (not related to particular or targeted industries) and refining these based on attributes observed in industrial areas in similarly sized cities in the region. This stage of refinement also did not connect the site characteristics to particular uses, but rather to industrial districts. After developing a list of typical site characteristics, the city related them to the target industries. Table 12-24, Rec. at 5882-5888. The department found that the record did not adequately explain the operational needs of the target industries or reasonably establish that many of the site characteristics are meaningfully connected to the operation of those industries. For example, the city only considered areas suitable if they are located within one-quarter mile of an arterial street or state highway. The findings for the transportation needs of high-tech manufacturing state:

Typical uses have frequent truck traffic to receive supplies and deliver product.
Many serve other industries, so close access is important.

While the department does not disagree with this finding, this finding does not explain the operational needs of high-tech manufacturing adequately to demonstrate that this use needs to be within one-quarter mile of an arterial.

- c. *Is an industrial district or park a “particular use” as that term is used in OAR 660-009-0015(2)? (Friends Objection 1; Staff Report at 17; Newberg exception at 11-13; Supplemental Report at 6; Newberg response at 7; Subsection V.B.1 of this report)*

The department concluded that an industrial district is not a “particular use.” The department provided its explanation of the level of particularity at which the analysis of required site characteristics should focus. The department concluded that “the term ‘particular’ should be interpreted in a way that allows a city a reasonable and practical path to compliance with the rules while addressing its economic development needs. At the same time, it cannot be construed so broadly that it renders the term ‘particular’ moot.” Staff Report at 17. This led to the department recommendation that the commission reject something as general as “manufacturing” or “business district” as a “particular use” for the purposes of establishing site characteristics.

The city’s exception pointed out that the administrative rule permits grouping of uses when the various uses have compatible site needs. The department addressed this exception in the

Supplemental Report, agreeing but stating that combining is permissible only to the extent that it would not result in the exclusion of a site that would be included if the site characteristics of an individual particular use were applied. Otherwise, the grouping of particular uses would undermine the “particular use” provision. *See* Supplemental Report at 6.

- d. *Did the city use site characteristics under OAR 660-009-0015(2) to exclude land from further analysis for the UGB when the factors the city used to exclude the property were appropriately considered when addressing the Goal 14 location factors? (Friends Objection 1.A-1.D; Staff Report at 18; Newberg exception at 13, 14; Newberg response at 8)*

The department concluded that a site characteristic is not invalid simply because it resembles a Goal 14 boundary location factor. The purpose of using site characteristics is to identify land that is suitable for the intended employment use while the purpose of the location factors is to decide which suitable land best balances a variety of potentially conflicting objectives. For example, land that cannot reasonably be served redundant power may be unsuitable for a particular use, and that land would be excluded from subsequent UGB analysis. The remaining, suitable land that can most efficiently be served with redundant power is an appropriate consideration during application of the location factors.

The department concluded that several of the site characteristics employed by the city were not valid, but not because they should have been considerations during the location factor analysis. Rather, the department recommended that the commission remand the site characteristics with instructions to the city to demonstrate that they are meaningfully connected to target industrial uses. The department noted that the city could choose to instead use that consideration when employing the location factors.

2. *Did the city demonstrate that residential compatibility is an operational need for industrial use or should it have included it during consideration of the Goal 14 location factors? (Friends Objection 1.A and 1.C; Staff Report at 23, 28; Newberg exception at 16; Friends Exception 2; Newberg response at 8; Friends rebuttal at 9; Does rebuttal; subsection V.A.2 of this report)*

The department concluded that the city had not demonstrated that the residential compatibility site characteristics it employed are meaningfully connected to or typical of target industrial uses, and therefore the city “should have. . .considered compatibility with adjacent residential uses during consideration of the Goal 14 location factors.” Staff Report at 25. (*See also* the department’s response to question 1.a, above.) The city demonstrated that the industrial areas in the cities it surveyed had particular locational relationships with residential land, but the department does not find that the city has demonstrated that these attributes constitute an operational need for target industrial uses. The recommended remand would not prevent the city, however, from attempting to justify residential compatibility site characteristics on remand.

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- a. *If residential compatibility is an appropriate site characteristic, is the city required to make a distinction between urban and rural residential in its compatibility analysis? (Friends Objection 1.C; Staff Report at 28; Newberg exception at 19; Section V.B.2 of this report)*

The department recommends the commission find that the city has not demonstrated that the residential compatibility site characteristics it employed comply with the rule. (See the department's responses to questions 1.a and 2, above.) The department has not recommended a finding that residential compatibility can never be an appropriate site characteristic, however.

The department recommended that the commission instruct the city, on remand, to analyze whether the land use pattern within a rural residential area leads to incompatibility with industrial use rather than assuming that all areas within a rural residential zone pose such conflicts (if the city chooses to continue with residential compatibility site characteristics).

3. *Can the location of a site be a valid site suitability characteristic? (Friends Objection 1.A; Staff Report at 24; Newberg response at 9)*

The department found that the location *is* an attribute of land and it could be a valid site characteristic if the attribute is found to be necessary for the operation of the intended use.

4. *Was the city correct in limiting its consideration of "close and suitable access" to arterials, or should it have considered major collectors? (Friends Objection 1.D and 1.E; Staff Report at 31; Friends Exception 4; Newberg response at 9-10; Friends rebuttal at 12-14; subsection V.A.4 of this report)*

The department found that limiting consideration to arterials and state highways could be reasonable because a functional classification is not just about the width of a street or other design standards, but the intended function of the street. While a street may be *built* to a standard that would handle truck traffic, this does not mean the city's transportation system plan calls for it to *function* as a truck route.

The submittal contains no explanation or evidence regarding why the city made this determination, however so the department recommends a remand so the city can provide the appropriate evidence.

5. *Did the city err in excluding study areas that had slopes predominantly greater than five percent? (Friends Objection 1.F; Staff Report at 31; Newberg exception at 23; Newberg exception at 23-25; Newberg response at 10; Friends rebuttal at 8; subsection V.A.3 of this report ("Sub-objection 1F"))*

The department concluded that the city has not demonstrated that this site characteristic is meaningfully connected to targeted industrial uses. See the department's response to question 1.b for a general explanation of meaningful connection. The department does not contend that grade

is never an appropriate consideration in determining suitability of land for industrial use, but the city's target industries list includes uses such as wineries that frequently site on greater slopes.

6. *Did the city adequately describe the nature of farm use and the impacts of urban development in its consideration of Goal 14 location factors? (Friends Objection 7; Staff Report at 56; Newberg exception at 39; subsection V.B.6 of this report)*

The department found that the city's explanation of the relative effects of the various alternative boundary locations did not adequately consider the nature of farm use in the area. The department accepted that, because the alternatives are quite close together, the effects are probably similar for each area as the city concluded. The department found that the analysis, however, was cursory and lacks an adequate factual basis. The full quote of the findings is in the Staff Report at p. 54. This will be an issue for the city if this submittal gets remanded and the city subsequently considers additional areas for expansion.

7. *Did the city adequately consider the impacts of the UGB expansion on farmland in northern Marion County? (Friends Objection 7; Carl objection; Staff Report at 57)*

The city concluded that the transportation routes through Marion County are designed or planned to accommodate expected traffic, or both. The department found that the city considered this issue and that there is substantial evidence in the record that the city appropriately addressed it in its findings.

8. *Did the city correctly implement ORS 197.298? (Multiple objections; Staff Report at 19)*

The department raises this issue because many of the objections cite ORS 197.298 in the list of laws that the submittal allegedly violates. The department found that ORS 197.298 includes a priority of land types that a city is to adhere to when including land in the UGB, and that Newberg adhered to the priorities. The allegations of non-compliance with ORS 197.298 stem from the objectors' contentions that the city did not include enough land, especially non-farmland, in the analysis. While it may seem like a legal technicality, the department finds that the commission's record should show that ORS 197.298 does not address which lands are to be considered, but instead provides a framework for how to consider them. The department did not find fault with the city's analysis under ORS 197.298.

9. *Did the city's study of comparable industrial areas contain methodological problems? (Friends objection 1.B, 1.E, and 1.F; Friends exception 3; Newberg response at 11; Friends rebuttal at 9-11; subsection V.A.3 of this report)*

This is really more than one issue, as Friends alleged several problems with the way the city completed the study of similar cities' industrial uses that the department did not address in the Staff Report. The issues concern elements of objections related to the city's exclusion and grouping of sites in its study of similar cities, how the city measured the distance to a nearby street, and whether site slope is a typical requirement for target industries. The department

concedes that it failed to address these issues in the Staff Report and considered them below. The department did not find that any of these issues resulted in a change to its recommendation.

10. Is the city required to address possible future road alignments and functional classifications when assessing site suitability? (Friends Objections 1.D and 1.E; Friends exception 5; Newberg response at 12; Friends rebuttal at 11; subsection V.A.5 of this report)

No. The department found no authority that requires a city to address potential future street networks or functional classification changes in its analysis of site suitability.

11. Did the city's analysis of required industrial site sizes include conclusions unsupported by evidence that resulted in required site sizes larger than the record shows is necessary? (Friends Objection 2, Staff Report at 34; Friends exception 6; Newberg response at 12; Friends rebuttal at 14; subsection V.A.6 of this report)

Yes. The department initially recommended that the commission reject Friends' objection that the site sizes the city used as the basis for its industrial land needs determination are unsupported. Upon analysis of the exceptions and the other materials submitted since the Staff Report, the department has concluded that the objection was correct and it should be sustained.

The central issue is to what extent assumptions must be explained in the findings. The city relied on expert's evidence in determining its industrial land need. Forecasts will always be subject to professional judgment, but the department found that record does not explain what that judgment was based on or what the conclusions were (except the final outcome). The department has changed its recommendation to remand with instructions to the city to provide adequate evidence regarding the number of industrial sites needed during the planning period.

12. Was the city's inventory of employment land completed in conformity with the requirements of OAR 660-009-0015(3)? (Friends Objection 4, Staff Report at 37; Friends exception 7; Newberg exception at 27; subsection V.A.7 of this report)

No. The department initially recommended that the commission reject Friends' objection that the city's employment land inventory was not supported by evidence in the record. Upon further review, the department has concluded it previously misconstrued the evidence. Upon analysis of the exceptions and the other materials submitted since the Staff Report, the department has concluded that the objection was partially correct and it should be sustained.

The issue is whether the city provided the descriptions of employment land within the existing UGB that is required by OAR 660-009-0015(3) in its employment land inventory. The department's initial review indicated that the information resided in the record (a 2009 inventory), but further inspection showed that information required to be included in the inventory was not in the record because the 2009 inventory had been updated and only a summary of the required information is in the record. The department recommends that the

commission remand the decision to allow the city to supplement the record with information regarding specific sites from the 2009 BLI, as updated in 2012.

- a. *Did the city appropriately address the capacity of the UGB to accommodate employment on fully developed land? (Friends Objection 3; Staff Report at 36; Newberg exception at 26; subsection V.B.3 of this report)*

This issue relates to how the city accounted for employment growth at existing firms where the site is already fully developed. Friends objected that the city's employment land need analysis did not assume that any future employment would occur on such sites. The department initially did not find an explanation of how the city addressed this issue and recommended remand for the city to explain its assumptions regarding the capacity of fully developed sites to absorb part of the employment growth.

With information contained in the city's exception, the department performed additional review of the record and found that the information is in the record. Record at 5723. The city accounted for "intensification" of land in the UGB and reduced the allocation of employment growth to new sites accordingly.

- b. *Does the city have a surplus of commercial land in the UGB? (Friends Objection 4; Staff Report at 38; Friends exception 7; Newberg response at 15; Friends rebuttal at 15; subsection V.A.7 of this report)*

The EOA addressed industrial and commercial land need and shows a deficit of each in the UGB, but the city decided to accommodate only industrial land at this time. Friends objected that the commercial land component of the EOA was not completed in conformity with the requirements of OAR 660-009-0015(3) for employment land inventories. Friends pointed to land it contended was vacant and designated for commercial use but was unaccounted for in the EOA as buildable employment land. The department reviewed the record and concluded that the objector was mistaken and recommended the commission reject the objection.

With the benefit of additional information and argument provided since completion of the Staff Report, the department has found that its initial review was not based on a full understanding Friends' objection. In its response to Friends' exception in this report, the department has found that, notwithstanding the city's reasonable argument that mixed-use zones are not expected to absorb as many jobs as pure commercial zones, the record does not explain how or whether certain vacant commercial lands are included in the employment land inventory. Consequently, the department recommends that the commission remand the submittal with instructions to supplement the record with information regarding whether a portion of the Springbrook District Village Area is designated for non-commercial uses or how the land was accounted for in the employment land inventory.

13. *Is the city's analysis of alternative areas to accommodate needed industrial land adequate? (Friends Objection 5; Cooper objection; Does objection; Schaad objection; Salmonsson objection; Staff Report at 39-49; Friends exception 8; Newberg exception at 27-34; Newberg response at 14; subsection V.A.8 of this report)*

Several objectors contend that the city did not adequately consider alternative locations to accommodate industrial land needs that are not high-value farmland. Each of the objections points to specific areas where the objector believes the city could accommodate at least a portion of the industrial land need without moving the UGB onto high-value farmland. The specific objections relate to a host of alleged deficiencies including adequacy of the record, conduct of the analysis of vacant and re-developable land, the site characteristics used to exclude the area, and boundaries of study areas. The Staff Report addressed the specific areas and made recommendations on whether the city satisfied relevant requirements; the department recommended sustaining some of the objections and denying others. Friends and the city submitted exceptions to the staff report, and the department's response to those exceptions are contained in this report.

The areas specifically cited in one or more objection include:

- Zimri Drive (Site VI, inside the existing UGB on the north side)
- South Springbrook Road (Site XII and Site 12, inside and outside the existing UGB on the southeast side)
- "Surplus commercial lands" (two areas inside the existing UGB zoned for commercial use)
- "Other commercial sites within the UGB" (several individual parcels inside the existing UGB zoned commercial not alleged to be surplus commercial land)
- Newberg-Dundee Corridor (Sites 8 and 9, outside the UGB on the west side)

Friends objected to many of the site characteristics generally. These objections apply those objections to specific sites. If the commission opts to remand the decision based on its use of site characteristics, many of the property-based objections will be decided.

The department is mindful of the commission's scope of review in this report. The commission's role is not to make an independent assessment of whether the areas listed above can accommodate Newberg's industrial land needs; the appropriate inquiry is whether the record contains substantial evidence, the city's conclusions were reasonable, and the result complies with applicable goals and rules.

Specific components of the major issues are addressed under subsequent questions, below.

- a. *Is the analysis of alternative areas based on substantial evidence? (Friends Objection 5; Cooper objection; Does objection; Schaad objection; Salmonsson objection; Staff Report at 39-49; Friends exception 8; Newberg exception at 27-34; Newberg response at 14; subsection V.A.8 of this report)*

The objections contain several allegations that the conclusions are unsupported by findings. The department has found one issue with the evidence in the record regarding a specific area and recommends a narrow remand regarding whether the Zimri Road area is adjacent to commercially zoned land (Staff Report at 39-42). The Staff Report recommends remand of the South Springbrook Road and Newberg-Dundee Corridor areas based on application of site characteristics that the department found to be invalid; the city's findings for why the areas are unsuitable for industrial use are therefore insufficient.

- b. *Does the analysis demonstrate how much of the need can reasonably be accommodated inside the existing UGB? (Friends Objection 5; Cooper objection; Does objection; Schaad objection; Salmonsson objection; Staff Report at 39-49; Friends exception 8; Newberg exception at 27-34; Newberg response at 14; Does rebuttal; subsection V.A.8 of this report)*

The department responded to several objections regarding the employment land inventory generally, and found some deficiencies. (See questions 11 and 12, above.) Issues specifically related to sites inside the existing UGB include whether (a) the city appropriately considered urban areas currently zoned residential and commercial for re-designation to industrial and (b) whether invalid site characteristics were applied. Except for an evidentiary issue with the Zimri Road area, the department recommends rejections of these objections. The submittal does not adequately demonstrate what portion of the industrial land need can reasonably be accommodated inside the existing UGB because of deficiencies in the employment land inventory for this reason and for the reasons explained under questions 11 and 12.

- c. *If areas studied for suitability to accommodate industrial need inside and outside the existing UGB are adjacent, must the city consider them as one study area or, alternatively, explain why they are not considered together? (Friends Objection 5; Staff Report at 43; Friends Exception 8 at 18; Newberg response at 14-15; Friends rebuttal at 22; subsection VI.A.8 of this report, under "North Valley/Chehalem Road Area")*

The department found that the legal framework for analyzing potential areas to accommodate industrial land needs is different for areas inside the existing UGB from the alternative expansion area. The standard for areas already in the UGB is whether the land can "reasonably accommodate" the need. OAR 660-024-0050(4). For potential expansion areas, a city addresses site characteristics, ORS 197.298, and the Goal 14 boundary location factors to decide which areas to include.

The department finds it reasonable that a city would address adjacent areas inside and outside the existing UGB together. However, because of the different criteria, the department concludes that requiring such combining could lead to potentially unresolvable complexities in the analysis. Friends contends it should be a case-by-case determination and a city should analyzed areas split by the UGB when the area can reasonably be considered as a unit. The city agrees with this proposition generally, but asserts that it doesn't matter in this case due to specific facts regarding the suitability of the contested areas for industrial use.

This issue matters in this case if the commission decides to remand the submittal. If the reasons the city found an area to be unsuitable for industrial use are found invalid, the city will benefit from this guidance on how to move forward on remand.

14. Did the city include more large sites in the UGB than its own analysis showed is needed? (Friends Objection 6.A; Staff Report at 49; Friends exception 9; Newberg response at 15; Friends rebuttal at 21; subsection V.A.9 of this report)

Friends objection contends that the EOA shows a need for one site in the 10- to 30-acre category and one in the 30- to 50-acre category, but the city included two sites in each category, resulting in an overly large UGB amendment. The department found that the acreage the city included in the UGB matched the demonstrated need and recommended the commission reject the objection. There has been further written argument on this topic and the issues are better explained, but the department's conclusion is the same: the city calculated a need for a certain number of sites in varying size ranges and *also* determined an acreage need. That some of the acreage need was accommodated on large sites does not result in a conclusion that the city included more sites than it needs.

a. Is the "Waste Management" site vacant? (Friends Objection 6.A; Staff Report at 50; Newberg exception at 34; Friends rebuttal at 20; subsection V.B.5 of this report)

Yes. The department recommended that the commission remand the submittal with instructions to consider the Waste Management site vacant. The city and the objector each provided reasonable arguments regarding the status of this parcel subsequent to that recommendation. Upon consideration of the additional materials, the department remains unpersuaded that the site is improved, and therefore continues to recommend remand.

15. Did the city inappropriately include extra acreage that is unbuildable and for which no need was demonstrated? (Friends Objection 6.B; Staff Report at 50; Friends Exception 10; Newberg exception at 34; Newberg response at 15; Friends rebuttal at 20; subsection V.A.10 of this report)

This issue relates to land the city included in the UGB that is in excess of the identified need for industrial land. The objection contends that the city has not demonstrated a need for the land, while the city points to where the findings specify a livability need as permitted by Goal 14, need

factor 2. Friends contends that, “If the city *had* demonstrated a need for additional land for “livability” the regulatory framework requires a showing that the need cannot be accommodated on higher-priority land and application of the locational factors in Goal 14.” Friends rebuttal at 21. While that might be true in circumstances where a city had identified a general “livability” need, whereas here, that need is in conjunction with another need, the department finds that it is reasonable to only consider those lands that can reasonably accommodate the identified need, *i.e.*, lands proximate to the industrial land to which the livability need is related.

The department recommended the commission reject the objection based partly on an administrative rule that encourages boundary locations on existing parcel lines, which mitigated the relatively large size of the “excess” acreage included. Considering the administrative rule and a lack of definition for or bounds on the use of “livability” as a need, the department recommended that the objection be rejected. The commission’s direction on this matter will help define the appropriate application of Goal 14, need factor 2 with regards to livability need in this and future UGB amendments. The commission may conclude that the city has not established a need for this amount of land as a livability need on this record, but afford the city the opportunity to make such a demonstration on remand.

V. RESPONSE TO EXCEPTIONS

The department received exceptions to its Staff Report from the city and Friends. The exceptions raise complex issues that require analysis by the department. Several of the exceptions contend the department misconstrued either what the city adopted or what the objector meant. The exceptions were not explicitly addressed at the commission’s February 13, 2014 hearing.

A. Friends

Friends submitted 10 exceptions on February 3, 2014 (Friends exception). The exceptions were submitted within the time required by OAR 660-025-0160(5).

1. Exception 1: Misapplication of Standards for Site Characteristics

LUBA’s two-pronged test for determining whether a site characteristic is appropriate for use in Goal 9 analyses (*see* Section V.A, Staff Report at 15-17) includes that the attribute is “typical” and “meaningfully connected” to a particular use. Friends objected to several of the site characteristics that the city employed as not satisfying either part of this test. The department agreed with some of the objections and has recommended remand of the decision with instructions to the city to demonstrate that the site characteristics are “necessary” for the operation of the target industrial uses; the department found that in most cases they city had demonstrated that the site characteristics are typical of the target uses, and it is to this conclusion that Friends takes exception.

Friends contends that the department did not explain why the city’s analysis is sufficient to establish what is “typical” for its targeted industries. Friends exception at 4.

Regarding one site characteristic, the Staff Report states:

“The findings rely on evidence from multiple sources that employment uses typically cluster together. The findings address the disputed proximity characteristic along with two others that are not objected to in this sub-objection. The city derived the site characteristics from its study of the industrial districts in similar cities that contain similar industrial uses. The study (‘Typical Characteristics of Industrial Sites,’ Rec. at 5965-95) considers the characteristics of industrial areas in several northern Willamette Valley cities chosen ‘because of their similar size and close location to Newberg.’ Rec. at 5972. Newberg ‘identified all industrial areas within these communities’ and ‘used the zoning and comprehensive plan maps from the communities to identify industrial areas.’ The study ‘examined each of these industrial areas and determined whether they either initially developed or had significant redevelopment since 1970, and whether they contained primarily [Newberg’s targeted] industries.’ Rec. at 5973.

“Although the analysis starts with the attributes of the industrial *areas* rather than with particular employment *uses*, the city has made adequate demonstration that the target industries typically locate in proximity to other employment uses because the tie to those uses has been made.” Staff Report at 26-27 (emphasis in original).

This passage was incorporated by reference regarding other site characteristics. *See, e.g.*, Staff Report at 31. The Staff Report also states, “The study looked at industrial areas containing Newberg’s target industries. The department finds that this is evidence that a reasonable person would rely on to establish that the target industries typically locate in proximity to other employment uses.” Staff Report at 27 (internal record references omitted).

Perhaps the department did not explain its reasoning well, so further explanation is provided. The city’s analysis of “typical” site characteristics for its targeted industrial uses is found in its study entitled “Typical Characteristics of Industrial Sites.” Rec. at 5965-5995. The city looked at industrially zoned lands within eight north Willamette Valley communities: Canby, Forest Grove, McMinnville, Newberg, Sherwood, Tualatin, Wilsonville, and Woodburn. The study identified 25 industrial areas within these communities for analysis (see discussion under Friends Exception 3 for discussion of the study’s exclusion of some industrial areas within these communities from the analysis). Contrary to the assertions of the objection, the study looked at many different types and sizes of industrial areas, ranging from single-user sites to very large districts such as North Wilsonville and West Tualatin.

The department found the city’s decision to study similarly sized communities in the north Willamette Valley to be reasonable because it provides a reasonable comparison for Newberg. Within those cities, the study found that almost all of the studied industrial areas consisted of districts, or aggregations of individual industrial users. The study states:

“[M]any existing industries have reused old lumber or agricultural processing sites, rail or water access sites, and small sites tucked in downtown areas largely due to historical happenstance. Where such recycled sites are not available, industries are looking to expand on large level industrial districts with good road access and few neighbor conflicts.” Rec. at 5972.

The results of the study itself, that 23 of the 25 studied sites consist of multiple rather than single industrial users, validate this assertion. It should be noted that it is not only industrial users that seem to want to congregate in industrial districts with certain site attributes – it has also been the policy of most cities since the creation of zoning ordinances and districts in the early 20th Century to isolate industrial districts to protect the city’s residents from the impacts of industrial uses.

Since industrial users are almost always grouped into industrial districts, the city’s study of site characteristics of such districts, as opposed to a more detailed breakdown of industrial users, is appropriate for determining what is “typical” of such industrial uses. It is only when the city gets to its “meaningful connections” analysis that its study of industrial districts rather than more specific industrial users or groups of industrial users lacks the necessary specificity.

Therefore, the department continues to recommend rejection of this objection.

2. Exception 2: Conclusions in Report Not Reflected in Recommendations

This exception contends that two of the city’s site characteristics that the department found were not adequately justified as “typical” were not reflected as such in the department’s final recommendation for remand. Staff Report at 3 and 61. As written in the Staff Report, the recommendation is to remand based only on a failure to demonstrate that the site characteristics are “meaningfully related” to a particular use.

The two site characteristics are:

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

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

Regarding the first site characteristic – 25 percent of the perimeter – Friends is correct, and the recommendation should be amended.

As to the second site characteristic – 50 percent perimeter for community centers – the department [did] not find that the city used this site characteristic to exclude any potential UGB expansion areas from analysis. Staff Report at 26. Accordingly, the department did not

recommend remand of the decision based on the use of this site characteristic. That finding and conclusion has not changed.

Unless amended for reasons related to other exceptions, the department's recommendation should say:

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

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

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

3. Exception 3: Methodological Problems

This exception identifies allegations of non-compliance Friends made in three separate objections that the department did not address in the Staff Report. Friends exception at 6. The department notes that its recommendation is to remand the decision on all three of the objections. The department explained its basis for recommending remand, but in fact did not address these other points.

OAR 660-025-0100, relating to review of objections to periodic review tasks, and by extension UGBs reviewing in the manner of a periodic review task, provides:

"(5) If the department receives one or more valid objections, the department must issue a report that addresses the issues raised in valid objections. * * * A valid objection must either be sustained or rejected by the department or commission based on the statewide planning goals and related statutes and administrative rules."

The department focused too much on the second sentence regarding sustaining or rejecting the objections and neglected to address every issue raised as required in the first sentence of the quoted rule. It is in the city's and the commission's interest that these issues be addressed so that the city has clear guidance in the event of a remand as to which issues need to be addressed, and which do not.

Sub-objection 1B: Among many other matters, this objection asserted that Newberg's report entitled "Typical Characteristics of Industrial Sites" (Rec. at 5965-5995), contained significant

factual errors resulting in an inappropriate conclusion that, in order for an area to be suitable for target industrial uses, it must “adjoin an existing industrial or commercial area, or an area with sufficient buildable land [defined as 50 acres] to allow expansion of the industrial district.” Specifically, the objection alleged the city: excluded 12 smaller districts within the eight north Willamette Valley cities studied in the report; reported inaccurate acreage figures for some of the districts; and inappropriately grouped non-contiguous districts together creating the appearance of one larger district. Friends asserts that these analytical errors resulted in an unreliable factual basis for determining a typical industrial area size. Friends objection at 8.

When this issue was raised during the local hearings, the city pointed out that the 12 industrial sites excluded from the study were not created or substantially developed within the last 40 years, so they do not represent expected future uses. Rec. at 3230-3231. Specifically, the city found that industrial uses sited prior to the 1970’s had much different site requirements, with a heavy emphasis on water and then rail access, and less of a need for level sites with good road access. In addition, several of these sites did not contain any of the industrial uses or types of businesses targeted by the city. Therefore, the city did not include the 12 industrial sites in its study. Rec. at 5971-5972. The department finds the city appropriately explained why it excluded the sites, based its decision on evidence in the record, and reached a reasonable conclusion.

Regarding the inaccurate acreage figures, the objection mentioned two specific areas where acreage figures in the city’s study appear to be inaccurate, one in Canby and one in Woodburn. In response to the Canby subareas, Newberg noted that the objectors misread the Canby zoning map and excluded an area zoned for “Heavy Commercial Manufacturing” from its analysis. Inclusion of these lands connects two other industrially zoned areas and creates one large industrial district. Rec. at 231. Regarding the Woodburn situation, Newberg did not specifically address the allegation, but the objection did not provide specificity regarding the acreage discrepancy (whether the Woodburn Commerce Way site was less than 50 acres), and, even if the site is less than 50 acres, this implicates only one of the 25 subareas studied, and thus constitutes minor error.

Regarding the alleged inappropriate grouping of non-contiguous districts together, the objection raised two specific instances – one in Wilsonville and one in Tualatin. The city noted that in both cases the intervening land is designated for industrial use by another jurisdiction – the county in Wilsonville and another city in the Tualatin example. Rec. at 3231. Whether these intervening lands integrate otherwise separate industrial areas is not explained in the city’s findings. The methodology section of the study says that sites were identified using “the zoning and comprehensive plan maps from the communities...” Rec. at 5973. The department finds that this is a pragmatic method for selecting areas for analysis, that the city explained its process and followed it, and that the city reached reasonable conclusions that the areas were of the reported size. Whether this method led to a couple of anomalous results does not undermine the whole study.

The department recommends the commission reject the allegations contained in this exception. The department again notes that the department recommends remand of the challenged site characteristic based on other grounds contained in sub-objection 1B. Staff Report at 27-28.

Sub-objection 1E: Among many other matters, the objection asserted that the city’s study of industrial districts erroneously found that such districts needed to be at least one-quarter mile from a state highway or arterial street because it measured the distance of the arterial to the edge of the industrial district, not the distance to individual sites within that district. As a result, many of the individual sites within the district are more than one-quarter mile from the major roadway, thus showing error in the city’s assertion that the one-quarter mile maximum distance from a major roadway is “typical.” Friends objection at 22-23.

The city maintained that it established the site characteristics based on what is typical of business districts, not the lots or sites within those districts. Rec. at 5972. There seems to be no argument about the facts. The department recommended that the commission find the city adequately established that target industries typically locate in business districts that exhibit the challenged transportation characteristics, but to remand the characteristics because the city did not demonstrate that the site characteristics are meaningfully connected to the operation of the target industries. Staff Report at 29-31. The Staff Report did not explicitly address the component of the sub-objection raised in this exception, but the conclusions are the same. The department recommends that the commission find that applicable administrative rules require that a valid site characteristic relate to the needs of a particular use, and that an industrial district is not a particular use.

Sub-objection 1F: Among other matters, the objection asserted that the city’s report entitled “Typical Characteristics of Industrial Sites,” which found that “typical” industrial land has a slope less than five percent, is skewed.⁵ In the Staff Report, the department concurred with much of Objection 1F as it relates to “meaningful connections” between slope and the needs of industrial users, but the exception is correct that the department did not make a conclusion regarding whether this slope characteristic is typical of targeted industrial uses. Staff Report at 31-33.

The city’s study looked at nearby northern Willamette Valley cities and their industrial areas. The industrial districts studied all had slopes less than five percent. This factual information satisfies the assertion made by the city that slopes of less than five percent are “typical” of the industrial districts, and the industrial uses within them. See also subsection V.A.1 of this report. Therefore, the department continues to find that the study of nearby cities adequately establishes “typical” attributes and recommends the commission reject this portion of the objection.

⁵ The objection states:

“However, the reason the Site Study found that “typical” industrial land is less than 5% slope is that all areas it included were, like most of the Willamette Valley floor, fairly flat. In areas that do not have any sloped land, all industrial districts will be flat by default, whether or not the resident businesses needed that characteristic to operate successfully. The results of the Site Survey therefore cannot establish the slope needs of particular industries.” Friends objection at 25.

The city also took exception to the conclusion in the Staff Report that the city erred in applying the slope characteristic to entire study areas rather than examining potentially suitable portions of the larger area. Because this exception is topically related, the department addresses it here. Specifically, the city's exception to the Staff Report states that the objector and department confuse "suitable" and "buildable."⁶ The city's exception also states, "[I]f the only thing lacking for a site to meet all the suitability characteristics was drawing different boundaries, then that is what would be done. In the two examples cited, both sites are far from meeting the suitability characteristics, so defining different boundaries is not necessary." Newberg exception at 25. The city found one study area (Area 15) could be bifurcated and part of the study area considered separately from the rest (this study area was found unsuitable for other reasons). This provides credibility to the city's assertion.

The department has reassessed its analysis of the slope site characteristic based on the city's exception. The department formerly found error with how the city applied the site characteristic, concluding that the city had not demonstrated that it is meaningfully connected to particular uses. The department admits that the city did evaluate partial study areas for consideration of different slopes within the area.

This leaves the question of whether the city demonstrated a meaningful connection between the slope characteristic and targeted industrial uses. For reasons stated in the staff report, the department continues to conclude that the answer is no. The department found the evidence in the record to be anecdotal. The city provided an excerpt from the record that is not anecdotal evidence, but it addresses industry generally and does not provide information regarding any particular uses. Accordingly, the department continues to recommend that the commission find the city has not demonstrated that the slope site characteristic is meaningfully connected to targeted industrial uses.

4. Exception 4: Major Collectors vs. Arterials

This exception deals with the city's site characteristics related to transportation access and how the department treated the objections. The specific issue relates to two site characteristics that assert a site is only suitable for target uses if it is within a prescribed distance of a state highway

⁶ The city's exception states:

"Rules are clear that 'buildable' and 'suitable' are separate considerations. The definition of 'suitable' under OAR 660-009-0005 (12) is:

"(12) 'Suitable' means serviceable land designated for industrial or other employment use that provides, or can be expected to provide the appropriate site characteristics for the proposed use.

"The fact that a site may be 'buildable' does not make that site 'suitable.' The fact that part of a site might be buildable with a 5-10 percent slope doesn't automatically mean that the whole site is 'suitable' even if it lacks areas with under 5 percent slope. This is the 'strict indispensability' test in another form that the Courts already have rejected." Newberg exception at 23.

or an arterial street. Newberg uses a familiar street classification system that identifies the function of each street, including arterials and collectors, and the city has established design standards for each class of street. Rec. at 6767.

Friends' objections state that the city did not explain why proximity to an arterial makes an area suitable for industrial use while proximity to a major collector does not, when the design standards for the two are similar. Friends objection at 20; Friends exception at 7. The department again notes that its recommendation includes sustaining these objections, just not for these reasons. The department did not locate any findings in the record explaining the city's reliance on arterials and state highways, but nevertheless found the city's reliance on proximity to an arterial street reasonable. To explain this further, a functional classification is not just about the width of a street or other design standards, but the intended function of the street. The objection was based primarily on the physical design of a minor arterial versus a major collector.⁷ As the city points out, while a street may be *built* to a standard that would handle truck traffic, this does not mean the city's transportation system plan calls for it to *function* as a truck route. Newberg response at 10. Thus, the department did not find this part of Friends' objection convincing and it did find the city's explanation persuasive.

The department conceded (and continues to concede) that the record does not explain why it is necessary that the streets be either arterials or state highways. Staff Report at 31. Rather, the city relied on general findings regarding the importance of available transportation in industrial siting and a survey of sample business district characteristics which found they are always within one-quarter mile of an arterial or state highway. Thus, as with other site characteristics, the department found the survey to demonstrate that a site characteristic is "typical" but not "meaningfully connected" to a particular use.

The city addressed this objection in its exception, but did not choose to elaborate on why proximity to a major collector is unsuitable for target uses. Newberg exception at 21. The city addressed the need for access to arterials at the February 13, 2014 hearing, providing reasoning why its choice was correct, but did not identify where this was addressed in the record. While the department is persuaded that the city's use of arterial streets and state highways in its analysis of site suitability was reasonable, there is insufficient evidence in the record to demonstrate why, so the department must recommend remand.

5. Exception 5: Existing vs. Potential Road Network

This exception contends that the department did not address an issue raised in Objections 1D and 1E – that the city excluded potential sites based upon the existing road network without consideration of the potential road network when an area develops. Friends exception at 8. The exception is correct; the Staff Report did not address these objections. Staff Report at 29-31.

⁷ Friends' objection states: "Both arterials and major collectors traverse residential areas. Major collectors are nearly as wide as arterials, and like arterials, do not provide any parking and have bikeways on both sides." Friends objection at 20.

OAR chapter 660, division 24 provides no specific guidance on whether a city must consider changes to its Transportation System Plan (TSP) road classifications during the UGB analysis process. The objection asserts, “The city must instead consider the access that *could* be provided once a new industrial area is developed” and “The absence of an urban road system cannot be a reason to exclude rural properties, or underdeveloped parts of the existing city or UGB, from consideration as future urban industrial land.” (Emphasis in original) Friends objection at 20 and 21, respectively. The objection does not cite what provision in a statute or rule requires this. The city most recently stated:

“In applying this characteristic, Newberg looked both at the existing transportation network and potential future transportation network. In at least one case (Wilsonville Road), Newberg concluded that an arterial reasonably could be provided in the area to provide access, and thus found that area suitable for industrial uses. See Record 5761. In other cases, such as Zimri Drive, Newberg concluded that an arterial could not reasonably be provided to serve the area. See Record 5730. Thus Friends’ blanket assertion that Newberg did not consider future road networks is false. The department’s question about whether Newberg is required to consider future road networks is an intriguing one, but in fact is moot because Newberg did consider both existing and future road networks.”
Newberg response at 12.

Friends contradicts these assertions. Friends rebuttal at 12. The department’s review of the record indicates that the city’s conclusion that Wilsonville Road would need to be upgraded to arterial status was made during consideration of the Goal 14 location factors, not when applying the site characteristics at the beginning of the analysis. The department found multiple examples of the city addressing the possibility of upgrading streets in the context of re-designating lands already in the UGB (including Zimri Drive). Rec. at 5729-5732. Such analysis for potential expansion areas was not found, so the department does not find Friends’ objection moot.

Friends contends that the city should consider upgrading the southernmost one-quarter mile of Zimri Drive, presumably to an arterial. The city contends:

“The real issue is that Friends believe that creating an arterial is a much more casual process than the facts show. As explained in the hearing, creating a state highway or arterial is not a simple process. State highways and arterials primarily serve through traffic. Thus creating one requires through destinations, in addition to a myriad of other analysis.” City response at 12.

The department agrees that arterial streets are, by definition, through routes. A city would not designate a quarter-mile segment at the end of a street differently than the remainder of the route, especially as an arterial; to suggest otherwise is unreasonable. The city made an unrebutted finding that Zimri Drive is not suitable as an arterial based on the grade along the full length of the street, and the department finds this conclusion is reasonable and based on evidence in the record. Rec. at 5730.

The larger question of to what extent a city must consider future changes to the transportation system plan (TSP) in determining whether land is suitable for a particular use is not answered by these specific examples. The city rightly points out that the definition of “site characteristic” uses “proximity to a particular transportation or freight facility such as. . .major transportation routes” as an example of what the term includes.

Such an analysis could come into question at several points during a UGB expansion process: when considering the ability of lands within an existing UGB to accommodate the need, when considering suitable site characteristics used to exclude lands outside of the existing UGB from further analysis, or when considering boundary location factors to choose among candidate lands for inclusion in a UGB. Some analysis of potential TSP amendments in concert with a UGB analysis may be appropriate, as the boundary is intended to accommodate long-term needs so future changes to the transportation can be planned.

Because the department finds no explicit requirement that a city address potential changes to the TSP when analyzing a UGB amendment, the department does not find that the city’s failure to do so requires a remand. However, if the commission remands this submittal, the department recommends that the city consider this issue on remand.

6. Exception 6: Site Sizes

This objection contends that the site sizes the city used as the basis for its industrial land needs are unsupported. Friends exception at 9.

The city expresses its industrial land need in number of sites and number of acres. The city calculated its industrial land need by forecasting the number of sites it needs in a variety of size ranges and translated this to acres by multiplying the number of sites by the midpoint of the range, with an adjustment for right-of-way needs. The site-size ranges were correlated with the sizes of the firms expected to expand or locate in Newberg. The results of the analysis are displayed in Table 12-20. Rec. at 5863.

The city advanced the number of sites and acres shown to be needed in Table 12-20 to the final need determination in Table 12-25. Rec. at 5892. The objection contends these site sizes are unexplained and lead to an inflated need determination. Friends objection at 26-30. The department recommended the commission reject this objection because it concluded the city’s distribution of the employment forecast among the site-size ranges was based on substantial evidence. Staff Report at 34-36.

Friends’ exception states that the department’s analysis was flawed because it relied on evidence that does not pertain to Table 12-20 but instead pertains to a different set of data in a different table. The exception reiterates the objection that the record does not support the assumptions the city used in assigning the site-size ranges to the firm sizes.

Table 12- 20: Site Size Distribution by Firm Employment Through 2032

Emps. per Firm	Percent of Emp.	Number of New Emps.	Number of Firms	Sites Needed	Size Range (Acres)	Ave. Site Size (Acres)	Ave. ROW Need (Acres)	Gross Buildable Acres Needed
0-9	15%	273	46	23	<2	1	0.15	26
				23	infill & redevelopment			0
10 to 74	40%	729	21	14	2 - 10	5	0.75	81
				7	infill & redevelopment			0
75 +	45%	820	3	2	10 - 30	20	1.00	42
				1	30 - 50	40	2.00	42
				1	infill & redevelopment			0
Total	100%	1,822	71	71				191

Source: Winterbrook Planning 2009, Newberg Planning Division 2012

The city states that it relied on expert opinion in assigning the firm- and site-size ranges in Table 12-20 and cites a case to support its contention that this is enough. Newberg response at 12. Friends states that even if expert testimony is relied on, the record must contain an explanation of what the assumptions and findings are that led to the conclusions. Friends rebuttal at 14.

The department stated:

As LUBA recognized, determining site characteristics is a somewhat subjective process. Rec. at 2006. Regarding industrial site size requirements, there is no standard parcel size or configuration that applies uniformly. Operational needs vary within any particular industrial category, and from firm to firm. The best a city can provide is an estimate that captures a reasonably significant portion of the target industries, an explanation of its assumptions, and reasonable conclusions. Staff Report at 36.

During its initial review the department found that the city had adequately justified its conclusions in Table 12-20. With the further explanation provided in Friends' exception and subsequent materials provided by the city and Friends, the department has concluded its original analysis was based on a misunderstanding of the record as detailed in Friends' exception. The department relied on evidence that the target industries utilized sites in the specified ranges that did not address contents of Table 12-20. Upon further review, the department does not find an explanation of how the city derived the data in Table 12-20.

The EOA contains considerable analysis of the local and regional economy, trends affecting the city's economy, the city's comparative advantages and disadvantages, and prospects for future industrial growth. This is valuable and useful information, but the department has not found where the city translated it into the data contained in Table 12-20. There is no formula that realistically translates opportunities into needs, and a component of professional judgment will

always be required. But the assumptions and findings of that professional judgment must be articulated in the record. OAR 660-009-0010(5) provides:

“The effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division.”

The department finds that the city has not explained what information is available or what data or assumptions it used. Consequently, the department amends its recommendation regarding Friends' Objection 2 and it recommends the commission sustain the objection and remand the submittal with instructions to the city to provide adequate evidence regarding the number of industrial sites needed during the planning period.

7. Exception 7: Inventory of Employment Land

The exception asserts several matters related to its Objection 4. The department recommended that the commission reject Objection 4. Staff Report at 37-38.

Employment Land Inventory. The exception asserts that the department erroneously relied on an unacknowledged buildable lands inventory (BLI), remanded by LUBA in 2010,⁸ to determine that the city had included a legally compliant employment land inventory in the record. The exception contends the city did not include this unacknowledged BLI in the record and that the only reason it is in the record is that the objectors themselves inserted it as an attachment to written comments during the local proceedings. Friends exception at 12.

The referenced BLI was remanded by LUBA in 2010. However, the city, in its exception, notes that the remand of the BLI was based entirely on its residential land, and did not involve employment land. Newberg exception at 17. The city also asserts that the inventory summary tables contain enough information to constitute a commercial and industrial buildable land inventory without further elaboration. Rec. at 5890-91, 5900, 5902.

Upon further review, the department does not agree with all of the city's contention. While the employment land inventory was not subject to the cited LUBA remand, specific information regarding specific sites is nevertheless required by OAR 660-009-0015(3),⁹ and the department

⁸ *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 2011 (2010). Slip opinion [here](#).

⁹ OAR 660-009-0015(3) provides in relevant part: “Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use.

“(a) For sites inventoried under this section, plans must provide the following information:

“(A) The description, including site characteristics, of vacant or developed sites within each plan or zoning district;

“(B) A description of any development constraints or infrastructure needs that affect the buildable area of sites in the inventory ***”

could not find this information in the record. It is plausible that the city could refute these particular objections by citing to detailed information regarding specific sites from the 2009 BLI, which the city states was updated in 2012. However, absent some identification of where this material is in the record, the department agrees with this exception.

The department recommends that the commission sustain Friends' Objection 4 on these grounds and remand the decision to allow the city to supplement the record with detailed information regarding specific sites from the 2009 BLI, as updated in 2012.

Failure to Account for All Land. The exception asserts that the department did not address an issue brought up as its objection: that a vacant site in the Springbrook Industrial Park was omitted from the EOA inventory of vacant industrial land, but was included on a map of buildable industrial land elsewhere in the record. The department agrees that the Staff Report did not address this portion of the objection. The city indicated that the disputed four-acre site, while vacant, is part of the A-dec dental equipment industrial site, and is not available and thus not included in the BLI. Newberg response at 13. The submittal includes evidence on which the city relied to conclude the land is unavailable.¹⁰ The department does not find this to be substantial evidence. The statements are speculative and conclusory and there is no attribution to a source.

The department recommends that the commission sustain Friends' Objection 4 on these grounds and a remand of the decision to allow the city to supplement the record with information regarding why the vacant A-dec site was not included in the buildable lands inventory.

Commercial Land Missing from Summary Tables and Maps. The objection asserted that Newberg's EOA did not include vacant commercial land located along Springbrook Road in the vicinity of Mountain View Drive. The exception contends that the department mistakenly rejected this objection based upon reliance on an employment land inventory that had been remanded by LUBA. If the land were to be included in the commercial land inventory, the objection asserted, the city would have a surplus of commercial land, and thus could redesignate some of it for industrial use.

The city has indicated that it did not include areas of the Springbrook District Village Area, which is the location of the missing commercially designated lands, that were designated in the mixed-use village plan for residential uses. Newberg response at 13. The city states it is a "mixed-use area planned part for residential uses and part for commercial uses." While the city's explanation is plausible, the department has not found a map or other explanation in the record

¹⁰ The full content of the first piece of evidence is in planning commission minutes and states: "One example is the land we all presume A-DEC will expand into, which is already available and zoned for industry. This vacant land will be used by one of Newberg's existing industrial users, which is part of one of our targeted clusters." Rec. at 854.

The second citation is from a 2010 staff report to the Newberg Planning Commission, and it states: "Notably, neither of Newberg's current largest campuses are likely to have much if any infill. . . .The A-dec campus has infilled numerous times over the past decade, and has little additional potential for further infill. Further expansion is more likely to occur on adjoining buildable land being held by the business owner." Rec. at 1024.

that demonstrates this assertion. The record contains a map of the Springbrook Master Plan (Rec. at 496), but the area in question is all designated “Village,” with no distinction between residential and commercial areas. Cities do not typically specify which areas within mixed-use designations will contain which uses because they are expected to be mixed. The record should, however, explain the assumptions the city used in determining the amount of commercial use that would be accommodated in mixed-use areas.

Friends’ provides evidence that all of the land is in fact zoned for commercial use but only a portion of the land is included in the employment land inventory. Friends rebuttal at 15. Without necessarily accepting this as factual, the evidence presented is credible and casts doubt on the city’s explanation. The department is unable to ascertain from the information in the record whether or why the city discounted the employment capacity of the Springbrook District Village Area.

The department recommends sustaining this exception, and remanding the decision to allow the city to supplement the record with information regarding whether a portion of the Springbrook District Village area is designated for non-commercial uses and how the land it was accounted for in the employment land inventory.

Other Employment Zones Missing from EOA. The objection asserted that the city ignored certain classifications of employment land when adopting its EOA, particularly land zoned for residential-professional and institutional uses. The exception asserts that the department did not address this issue in its report. Friends exception at 15.

The department agrees that this portion of the objection was not addressed in the Staff Report. Newberg asserts that it did in fact consider institutional and residential professional land in its employment land inventory when it determined that inclusion was appropriate. Newberg response at 13. As an example, the city notes that it included, as Site VIII, land adjacent to Providence Hospital that is currently zoned as Institutional and Residential-Professional. Rec. at 5730. This fact refutes the claim in the objection and exception, that the city ignored such lands in its EOA. The allocation of the employment forecast to various sectors in Tables 12-15 and 12-19 includes an “other” category, which includes “includes schools, churches, government water and waste water plants, on-site construction, and home occupations.” Rec. at 5845. This analysis was carried forward into the commercial land needs analysis in Table 12-26.

The department recommends that the commission reject this portion of the objection because the city considered non-commercial lands in its “other employment land” need determination.

8. Exception 8: Accommodation of Land Needs

This exception asserts several matters, which will each be discussed separately, below.

Zimri Drive (Site VI). This site is located within the UGB. The exception asserts that the department correctly recommended remand of the city’s analysis of this subarea, but cited the wrong site characteristic as the reason for remand. Instead of citing the site characteristic based

upon a minimum of 20 buildable acres, the department should have cited the site characteristic based upon adjacency to an existing industrial or commercial area or a site size of at least 50 buildable acres. Friends exception at 16. The department recommended remand of both site characteristics based upon the city's inadequate explanation of the "meaningful connections" prong of the "necessary site characteristics" test set forth by LUBA.

The city's exception addressed this site, reiterating why its findings and application of site characteristics complied with applicable rules. Newberg exception at 28. The Staff Report recommended remand of the city's findings regarding this specific area on narrow grounds regarding adequacy of the record, but noting also that several of the site characteristics the city used to find the area unsuitable for industrial use were invalid. The department finds nothing in the city's exception that changes its conclusions in the Staff Report.

The department agrees with the Friends' exception, and alters the staff recommendation to reflect the correct site characteristic (adjacency to existing commercial or industrial areas).

Surplus Commercial Lands. Friends' Objection 5 identified several vacant commercial parcels within Newberg's UGB and asserted that these parcels could accommodate industrial use. Friends objection at 45-47. The department recommended rejection of the objection because the city did not have a demonstrated surplus of commercial land in the UGB. Staff Report at 45-46. The exception reasserts a contention that the city does have a surplus of commercial land (see also exception 7, above), noting that the department's original recommendation was based upon reliance on the unacknowledged and remanded BLI. The exception also asserts that, even if the city does not have a surplus of commercial land, it is obliged to determine if the commercial designations can be relocated onto different parcels within the city, and replaced by industrial designations on these properties.

The department recognizes that the Newberg employment land inventory cannot be relied upon to find whether there is a surplus of commercial lands within the city, and also recognizes that the city should provide additional evidence regarding commercial designation of an existing parcel near the intersection of Springbrook Road and Mountain View Drive (see discussion under exception 7, above).

The department recommends that the commission find this part of Friends' objection moot because, just as the city cannot rely on the employment land inventory to find that there is no surplus of commercial lands, the objector cannot rely on the same inventory to find that there is a surplus. The evidence as to whether such a surplus exists is inconclusive – thus the record contains no definitive information that a surplus exists such that industrial uses can be "reasonably accommodated."

North Valley/Chehalem Road Area Adjacent Sites Inside and Outside of UGB. Friends' Objection 5 identified two subareas outside of the UGB (Sites 1 and 3) that are adjacent to a site inside the UGB (Site I), and asserts that these sites should be combined and, as combined, would meet additional identified site characteristics for industrial land. Friends objection at 54-55. The

exception disagrees with the department's recommended rejection of this argument, stating that the department's apparent position is that a city is never required to study lands within a UGB in combination with lands outside of a UGB because of the different legal standards of review, and the department's apparent position that lands within a UGB can always be assumed to be indispensable in meeting a city's identified long-term land needs. Friends exception at 17-19.

The department believes that combining study of lands within a UGB and lands outside a UGB in a single study area for purposes of meeting identified land needs, in order to optimize the use of land to meet those needs, is a good practice and should be encouraged. However, the department does not agree with an assertion that cities are *required* to combine study of lands within a UGB and lands outside a UGB in a single study area. Such a requirement would expose an already complex analysis of a UGB expansion to the additional, perhaps unresolvable, complexities of having a single subarea with individual components of land subject to different legal standards regarding meeting identified land needs.

The department continues to recommend that the commission reject of this portion of the objection.

9. Exception 9: Additional Large Sites

Friends Objection 6A contended that the city had included too many large sites in its proposed UGB expansion, adding two 10- to 30-acre sites and two 30- to 50-acre sites when its projected need was for only one of each of these sized sites. The department recommended rejection of the objection on the grounds that the city identified a need for 131 acres, and the expansion provides 129 acres, and that therefore the city included as much land as was needed, not more. Staff Report at 49-50. The exception asserts that the city's need is based upon the number of sites needed, not total acres. Friends exception at 19.

The city states that the plan anticipates some of the currently large parcels could be subdivided to meet identified needs for smaller parcels in an industrial park-type development, Newberg exception at 34. The city also points out that the EOA determined a need for both a number of appropriately sized sites and a specific number of buildable acres for industrial land. Newberg response at 15. The EOA identifies the city's need as one 30- to 50-acre site, one 10- to 30-acre site, and "industrial park sites totaling approximately 71 buildable acres." Rec. at 5892. The latter is a summation of the acreage of smaller sites that the city found cannot be accommodated inside the existing UGB.

The number of acres is relevant. The 131 acres of industrial land the city found it needed was based on one site in each of the two larger site-size categories. Although the number of larger parcels the city included in the UGB exceeds the need for large sites, the second large parcel included in each size category was not included to accommodate a *site* need, it was included to provide an adequate number of *acres*.

The department finds the EOA has not included excess lands for the reasons stated in Friends' Objection 6A and continues to recommend that the commission reject this basis for the objection.

10. Exception 10: Extra Acreage

The objection contended that the proposed inclusion of 128 "unbuildable" acres with the 132 buildable industrial acres, doubling the size of the expansion, was unacceptable because the city had not demonstrated a need for 128 acres of additional land on the fringe of the UGB expansion area. The exception disputes the department's recommended rejection of the objection on the grounds that the department did not state the demonstrated need it believes will be satisfied by the inclusion of the additional land. Friends exception at 20-23.

The department recognizes that the reasons the department cited for its recommendation to reject the objection do not relate directly to need, but rather relate to practical aspects of the city's decision: the preference for clearly demarcated boundary lines for the UGB; the city's projected use of the lands for parks; and the city's floodplain regulations, which greatly restrict development in floodplains and riparian areas. In addition, the department concedes that the public facility need for three acres is minimal justification for the 128 additional acres. Staff Report at 50-51.

The exception states that the city did not establish a need for the additional land. The city did assert a need: that the additional acres are included to promote livability, as allowed by the second Goal 14 need factor. The land, according to the city, will provide amenities for the employees within the industrial area. Rec. at 5791-5792.

The department wishes to expound on a statement the Staff Report, which says, "if buffering were the only reason to include the land in the UGB, the riparian area can serve that function equally well outside the UGB." Staff Report at 51. The issue is that "buffering" as defined by the city is more than just a passive vegetated area dividing the industrial lands from other uses. It is also intended to help "create a quality, attractive, and balanced working environment for workers in that area." Providing amenities to fulfill this intention may require uses and structures that are not allowed on lands outside a UGB and on lands designated for agricultural use.

The exception points out that the Staff Report does not explain whether the department finds the city's inclusion of nearly twice as much land as it needs for industrial use to be *de minimis*. Friends exception at 22. To be clear, the department does not find 128 acres of a total 230-acre expansion to be *de minimis*, but neither does the department concede that all of the acreage is not needed, because to make that finding would require that the department ignore the city's findings of need related to livability. Livability as a need factor is not defined in Goal 14, so the commission will need to determine whether the city has established that the inclusion of the 128-acres was done to meet an identified livability need that is consistent with the intent of the goal. Friends contends that the city is required to analyze whether the livability need can be accommodated on higher-priority lands. The department notes that the city made a location-

specific determination for this need, as it will enhance the livability for those who are employed in the adjacent industrial area.

The department's recommendation for rejection of the objection was based partly on an administrative rule provision, provided in footnote 10 of the Staff Report:

OAR 660-024-0020(2) provides: "The UGB and amendments to the UGB must be shown on the city and county plan and zone maps at a scale sufficient to determine which particular lots or parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location."

Because the city found a need for land to enhance livability and the rule encourages a jurisdiction to use existing parcel lines, the department found that following existing property boundaries and natural features to be consistent with relevant goals and rules and recommended the objection be rejected. The commission may find that the city's action is either not an acceptable application of Goal 14 need factor 2 and come to a different conclusion or that the city had not adequately demonstrated the livability need for inclusion of this particular amount of land.

Incidentally, the Staff Report states: "If buffering were the only reason to include the land in the UGB, the riparian area can serve that function equally well outside the UGB." The city takes exception to this and states its stream buffering standards only go into effect if the land is brought into the UGB. To explain the department's position more fully, the land will not be subject to development pressure if left out of the UGB because it will continue to be subject to Yamhill County's acknowledged Goal 5 program, and the existing EFU zoning is fairly restrictive. The department does not agree that the city has established that the resource will be better protected if included in the UGB.

B. City of Newberg

The city submitted 12 exceptions, which include a response to some of Friends' objections, on February 3, 2014 (Newberg exception). The exceptions were submitted within the time required by OAR 660-025-0160(5). The exception letter begins with an explanation of the city's view of what constitutes a valid site characteristic and why the record before the commission provides substantial evidence to justify the city's submittal as consistent with applicable goals and rules. Newberg exception at 6-14. Most of the city's exceptions refer to this discussion and assert the department erred in recommending remand, primarily in relation to interpretations of whether a site characteristic is "meaningfully connected" to a "particular use."

The department has explained its understanding of site characteristics. Staff Report at 15-17; Supplemental Report at 4-6; chapter III of this report. The department continues to find that the reasons for its recommendation to remand the submittal are correct, and the city's individual exceptions are not addressed with specificity unless they raise a unique or specific issue not already discussed.

Several of the city's exceptions concern issues addressed in section A of this chapter, as the issues were initially raised by objectors. The department considered these exceptions while responding to Friends exceptions, so those are not repeated here.

Remaining exceptions from Newberg are considered below.

1. Group of Parcels as a "Particular Use"

The city contends the department was wrong when it recommended the commission find that a business district is not a "particular use" and therefore site characteristics based on business districts are not a valid reason to exclude land from the UGB analysis. The city's exception contains its view of how a group of parcels (an "industrial district" or "industrial park") is properly considered a "particular use." Newberg exception at 11-13. The department addressed the city's exception in a general way in the Supplemental Report.

The city states:

"This is very much analogous to identifying site characteristics for a shopping center. A local plan may identify a need for a shopping center, and one would expect it to identify site characteristics based on typical characteristics of the comparable shopping centers, such as a minimum site size of 10, 20, or 30 acres and access to a major road. One would not expect to look solely at the characteristics of *each business individually* within that shopping center. A shopping center may have a combination of large and small businesses that individually occupy from over 10-acres to as little as a X acre each. In theory a city could parse those individual stores out to separate scattered lots all over the city, dispense with the need to find a single 10, 20, or 30 acre site, and still meet its total commercial acreage need. But there are reasons ('meaningful connections') that many some stores locate in shopping centers as opposed scattered individual sites, such as attracting regional customers." Newberg exception at 13. (Emphasis in original.)

The department responded:

"If the city is attempting to exclude a site based on site characteristics, the city may combine two or more 'particular uses.' The department believes such combining might be permissible, but only to the extent that it would not result in the exclusion of a site that would be included if the site characteristics of any individual particular use were applied. Otherwise, the grouping of particular uses would undermine the "particular use" requirement." Supplemental Report at 6.

The city's further argument contends: "If targeted industrial uses need to locate in industrial parks rather than on isolated parcels, but Newberg's industrial land supply consists only of isolated parcels, and then Newberg won't have the opportunity to locate targeted industrial uses

in the community.” Newberg response at 8. The department found that the city has not demonstrated that its target industrial uses need to locate in industrial parks.

The city’s findings provide general statements about industry practices and the results of its survey of similar cities. While this evidence is compelling, and likely applies to industry generally, the city has not demonstrated that its target industries all have this need. For example, the city determined that most agricultural business cluster firms will locate in new industrial districts. *See* Table 12-24, Rec. at 5882. While Table 12-24 identifies wineries and several other agricultural businesses that are located in business districts in the study, but the record does not in any way establish that they need to be in a group, only that they are.

The department continues to recommend that the commission find that the city has not demonstrated that a business district is a “particular use” for the purposes of applying site characteristics to exclude land from a UGB analysis.

2. Residential Proximity

Most of this exception is rebuttal to the department’s conclusions that the city’s residential compatibility site characteristics are not meaningfully connected to the operation of target industrial uses. Newberg exception at 16-19. The city also takes exception to the department’s recommendation that rural residential development should be treated differently than urban residential areas. Staff Report at 28-29. The exception contends the city only applied this site characteristic when the area was adjacent to small-lot “semi-urban” zoning, which it defines as a zone with a minimum lot size smaller than 2.5 acres. The department’s review of the record indicates that Areas 3-8, 12, 19, and 20 were found to be unsuitable for industrial use do to proximity to residential use. Rec. at 5747-5752. Only Areas 3, 4, 6, and 8 are adjacent to “semi-urban” residential zoning. (Yamhill County zoning map, Rec. at 6176.)

The city also takes issue with the department’s conclusion that an assessment of the land use pattern, rather than the current zoning designation, is appropriate. The city states that conflicts are with residential *use*, not just residential *buildings* and that land use patterns can change if allowed by the zoning. The department concurs with this assessment, but continues to contend that the threat of conflicts with rural residential use is different from that for urban density housing and warrants more analysis than the broad exclusion of land the city employed.

3. Built Space Capacity

The department recommended remand of the submittal based on its review of the method the city used to account for future employment in existing buildings. Staff Report at 36. The department found that all of the employment forecast had been allocated to vacant or re-developable land, and none to land that was already fully developed. The objector provided evidence that existing firms had considerable capacity to absorb additional employment. The city addressed this in its exception and provided additional information. Newberg exception at 26.

Upon further review, the department finds that the city included adjustments when it distributed its employment forecast among new current and expected future firms that account for

employment on developed land. *See* Table 12-20, reproduced on page 27 of this report. The table indicates only “infill & redevelopment” as locations for employment, but the narrative in the EOA states that the city included infill, redevelopment *and intensification* of existing employment land in this calculation. Rec. at 5723. Intensification means adding employees in existing firms. While the city did not establish how much of this employment would go to infill and redevelopment as opposed to intensification, the city did account for up to 44 percent of its expected employment growth to be accommodated inside the existing UGB.

The department previously stated:

The department recognizes that cities have options regarding the method employed to estimate the capacity of the existing UGB to accommodate job growth, and that no method should be held to an unreasonably high standard for accuracy. The department does not find that the city’s lack of assigning employment growth to fully developed land is necessarily an error, but rather that the EOA at least needs to discuss how this aspect of accommodating growth has been accounted for in the analysis. Staff Report at 37.

The department has now found that discussion and recommends that the commission reject this objection.

4. Alternative Sites

The city’s exception generally disputes the department’s recommended remand on specific issues related to several of the subareas analyzed and excluded by Newberg due to site characteristics. For two of these subareas, both located in the Newberg-Dundee corridor (Subareas 8 and 9), the exception alleges that the department’s reasons were based upon errors of fact.

The city points out that the staff report erroneously states that these two subareas are already within the UGB. Newberg exception at 32. The exception is correct. Additionally, the department notes a formatting error in the Staff Report on p. 47. The part of the page below Table 3 should read as follows:

Subarea 8 is also found by the city to not meet the following criterion:

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

Subarea 9 is also found by the city to not meet the following criteria:

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

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

Each of these site characteristics is considered below.

The department believes that the formatting error in the staff report, corrected above, resolves the second alleged error in the staff report, that the department recommended remand of Subarea 8 based on a city finding that the site lacked proximity to an arterial roadway.

The department's analysis was not predicated upon these parcels already being within the UGB; the reasons for remand remain valid for these two subareas although they are not within the UGB. The department's recommendation for remand is based on the fact that the city did not generally prove a "meaningful connection" for any of the site characteristics used by the city to exclude these subareas.¹¹

Therefore, the department continues to recommend the commission sustain Friends' Objection 5 as explained in the Staff Report, with the corrections noted above.

5. Lands Included in the UGB

In response to Friends' Objection 6, the department recommended the commission remand the submittal with instructions to consider a particular parcel, the "Waste Management site," vacant. Staff Report at 50. The city's exception provides additional information regarding the use of the site that the department did not consider for the Staff Report. Newberg exception at 35-38. The city calculated that the site contains only 3.32 acres of buildable land. Rec. at 5767. The remainder is classified as built or unbuildable (due to areas within a stream corridor). The site is adjacent to a neighboring lot under the same ownership that contains structures. Rec. at 5807.

The department considers these to be significant pieces of information. A finding that a relatively small area of buildable land currently in use is unlikely to redevelop is more credible than the same finding for a 13-acre parking lot, which was the assumption behind the department's recommendation.

The city continues to rely in part on the *lack* of substantial evidence that the site will redevelop during the planning period. Newberg exception at 38. The department said:

The city relies partially on the statement, "There is nothing in the record to suggest that Waste Management will abandon this site or develop it into something else." Rec. at 6003. There is nothing apparent in the record that suggests it will *not* be developed, and the department finds that without evidence either way, the city is required to consider the land vacant and available for development. To conclude otherwise would render moot the entire inventory

¹¹ Of note regarding the Newberg-Dundee corridor subarea, the record does not contain any explanation as to why the city created these two subareas without including adjacent rural lands. This is relevant because it appears that including those lands could have created of a larger, potentially viable industrial district adjacent to the UGB.

requirement in OAR 660-009-0015(3) or, alternatively, require a city to complete an onerous exercise of documenting the development plans of every owner of vacant employment land in the city. (Emphasis in original.) Staff Report at 50.

The department finds that this conclusion is still valid. The department is recommending the commission remand the employment land inventory to document the status of the “A-dec site” on similar grounds (*See* subsection V.A.7 of this report.) The primary difference here is that the land is in use by an existing operation.

The city provided analysis why this site contains “permanent structures.” Newberg exception at 36-37. The department remains unconvinced that fencing and landscaping constitutes “an addition or change that makes something better or more valuable” that is “continuing or enduring without fundamental or marked change.” (*See* Newberg exception at 36.) The structural improvements on the west side of the site (albeit on a separate tax lot) are certainly permanent structures.

On balance, the department is unpersuaded that the site is improved. The department continues to recommend that the commission remand with instructions to consider the Waste Management site vacant in the employment land inventory.

The city indicated that the department erroneously stated the Waste Management site is in the existing UGB, while it is actually in the expansion area. Newberg exception at 35. The findings should be amended to reflect this correction.

6. Goal 14 Location Factors

Newberg takes exception to the department’s recommended remand based on a finding that the record “do(es) not describe the nature of the farm use in the vicinity or the effects of the urban use proposed, so no meaningful comparison of the effects of alternative boundary locations can result.” The exception contends the city completed the proper analysis. Newberg exception at 39.

The department found that “at least some specific consideration of the nature of the farm use in the area and potential impacts from industrial use is needed” but wasn’t apparent in the record. The department conceded, however, that, “Since all of the alternative areas are in close proximity, even overlapping, the expected level of findings and analysis may be different in this case than would be expected for more widely distributed alternatives.” The department’s recommendation attempts to balance the practical aspects of what level of specificity is required for any Goal 14 analysis versus the varying level of effort needed in a specific case. The department believes that, since the alternative expansion areas present in this case are fairly homogeneous, the level of findings required may not be as extensive as would be expected when the alternative areas are more diffuse. But the department found that an analysis of effects on “nearby agricultural activities” cannot be complete without an explanation of what those activities are. None was present in the record.

The department also recognized that the recommendation included proposed remands on several items that could result in the city considering additional alternative expansion areas. If that transpires, the city would almost certainly need to provide a more robust analysis for the Goal 14 location factors than is present in the current submittal, and the report points that out.

The department continues to recommend that the commission remand the submittal with instructions that the city supplement the analysis of alternative expansion areas with an adequate factual base to demonstrate the Goal 14 location factors have been considered and balanced.

VI. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS

A. Recommendation

The analysis, findings, conclusions, and recommendations contained in this report agree in some cases with those in the Staff Report and in other cases modify or amend the earlier report. Based on review of the record, objections, exceptions, and other submitted materials, the department recommends the commission remand the Newberg UGB amendment submittal for further development of the record and analysis. The specific recommendations are provided below, with changes to the recommendation in the Staff Report indicated by underscore for additions and ~~overstrike for deletions~~.

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

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

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

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

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

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

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

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

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

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

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

3. Explain why target industrial uses must be in close proximity to an arterial street or state highway and not a collector.
4. Provide adequate evidence regarding the number of industrial sites needed during the planning period.
5. Include the content required in OAR 660-009-0015(3) in the employment land inventory.
6. Provide information regarding why the vacant A-dec site was not included in the buildable lands inventory.
7. Provide information regarding whether a portion of the Springbrook District Village area is designated for non-commercial uses and how the land it was accounted for in the employment land inventory.
8. ~~Explain how the determination of the capacity of the existing UGB to accommodate employment growth considered employment growth on fully developed land.~~
8. Clarify that the Zimri Road area (Site VI) is not adjacent to commercially zoned land, and provide adequate justification as to why this site cannot reasonably accommodate industrial uses, or consider it in the Goal 14 analysis of alternative locations to accommodate industrial land needs under OAR 660-024-0050(4).

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9. Adequately justify why the portion of South Springbrook Road outside the existing UGB (Subarea 12) is unsuitable for industrial use or consider the area in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
 10. Adequately justify why Sites 8 and 9 (Newberg-Dundee corridor) are unsuitable for industrial use or consider them in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
 11. Consider the Waste Management site vacant in the employment land inventory.
 12. Supplement the analysis of alternative expansion areas with an adequate factual base to demonstrate the Goal 14 location factors have been considered and balanced.

The department also notes there are recommended corrections to the proposed findings and conclusions contained this report that do not change the final recommendation.

B. Proposed Motion

Recommended Motion: I move the commission remand Newberg's urban growth boundary amendment submittal based on the findings and conclusions in the January 23, 2014, staff report, the February 10, 2014, supplemental report, and the March 7, 2014, supplemental report, with specific instructions as defined in Section VI.A of the March 7 report.

C. Optional Motions

Remand on other bases: I move the commission remand Newberg's urban growth boundary amendment submittal based on the findings and conclusions in the January 23, 2014, staff report, the February 10, 2014, supplemental report, and the March 7, 2014, supplemental report, with the following changes: _____.

For approval: I move that the commission approve Newberg's urban growth boundary amendment submittal based on the commission's findings that: _____.

**Exhibit “B”
to Resolution No. 2015-3189**

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

12/4/2003	City Council establishes the Ad Hoc Committee on Newberg’s Future, and asked them to make recommendations on how the city should provide for future industrial and other types of development.
4/2004 – 6/2005	Ad Hoc Committee on Newberg’s Future holds 25 meetings and two open houses. Working with consultants, the committee develops projections for employment land and other land needs. The committee considers a number of options for growth.
7/21/2005	Ad Hoc Committee on Newberg’s Future delivers their report “Recommendations on Newberg’s Future.” The Committee recommends that the South Industrial area be included in the UGB to meet 20 –year industrial land needs, and that additional land be included in an urban reserve to meet land needs through 2040.
8/1/2005	City Council adopts Resolution No. 2005-2590, directing staff to undertake activities needed to implement the recommendations of the Ad Hoc Committee on Newberg’s Future.
11/21/2005	City Council adopts Ordinance No. 2005-2626, adopting industrial and other land needs.
1/3/2006	City Council adopts Ordinance No. 2006-2635, adopting an economic opportunities analysis
2/7/2007	The County Commissioners approve a Measure 37 Claim for the Gaibler property, enabling them to develop a rural residential subdivision on the property.
8/5/2007	City Council adopts Ordinance No. 2007-2673, authorizing a development agreement with the Gaiblers, agreeing that the city would pursue a UGB amendment and annexation for their property in exchange for the Gaiblers agreeing to an industrial designation instead of developing the property as residential.
7/2/2008	City Council adopts Ordinance No. 2008-2698, including the South Industrial area and other land into the Urban Reserve area.
7/21/2009	The Oregon Department of Land Conservation remands the urban reserve to the city for various technical reasons. DLCD issues an opinion that, “the city may well be able to demonstrate the need for large, relatively flat industrial land based on its recent economic opportunities analysis,” but indicated that the city should pursue a UGB

Exhibit “B” to Resolution No. 2015-3189

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

Exhibit “B” to Resolution No. 2015-3189

1/22/2013	City Council adopts Ordinance No. 2013-2759, incorporating the revised population forecast into the South Industrial UGB findings. The Council also votes to ask the County Commissioners to adopt the UGB as one amendment instead of two.
5/20/2013	City Council adopts Ordinance No. No. 2013-2761, adopting revised findings to the South Industrial UGB amendment, revisions to the Economic Opportunities Analysis, amendments to the comprehensive plan and transportation system plan, and repealing certain Ordinances(Nos. 2010-2723, 2010-2740, 2012-2751, 2013-2759).
8/27/2013	The updated UGB amendment is sent to the Department of Land Conservation & Development (DLCD) in the manner of periodic review.
12/20/2013	DLCD refers Newberg’s UGB amendment to the Land Conservation & Development Commission (LCDC).
2/13/14 & 3/14/14	LCDC holds hearings on Newberg’s UGB amendment. At the 3/14/14 meeting, LCDC gives the city until May 22, 2014 to decide whether they will enter mediation with objectors (primarily 1000 Friends of Oregon) or accept a remand.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 4, 2015

Order ___ Ordinance XX Resolution ___ Motion ___ Information ___
No. No. 2015-2781 No.

SUBJECT: An Ordinance Amending the Uniform Nuisance Abatement Procedure in NMC § 8.15.170 et seq.

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

HEARING TYPE: LEGISLATIVE QUASI-JUDICIAL NOT APPLICABLE

RECOMMENDATION:

Adopt Ordinance No. 2015-2781 to amend the Nuisance Abatement Appeal Procedure in NMC § 8.15.200.

EXECUTIVE SUMMARY:

The current uniform nuisance abatement procedure contains provisions for appeals to the City Council. The Council has instructed staff to review this process and determine if a more efficient procedure could be suggested. After review of similar jurisdictions and consultation with the municipal court, staff recommends changing the appeals process to send appeals to the municipal court, which is the major change to the code.

Additional changes to clarify ambiguities, fix grammar and use consistent terms have been made as indicated below. On the following pages, marked as Exhibit A, is the code section in legislative format, showing changes that have been made.

FISCAL IMPACT:

This change will have a minimal effect on the court workload, since the court is well positioned to administer nuisance appeals. This will save time during Council meetings, but likely have no, or minimal, financial impact.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

This process will eliminate unneeded review and approval by the City Council. (Goal 7 – Manage and operate the City government in an efficient and effective manner)

EXHIBIT A

By adopting the proposed ordinance, the uniform nuisance abatement process would be amended in the follow ways:

Article IV. Uniform Nuisance Abatement Procedure

8.15.170 Establishment, purpose and title.

A. A uniform nuisance abatement procedure is established and continued to simplify the abatement of nuisances existing in the city.

B. This article shall be known and referred to as the uniform nuisance abatement procedure ordinance and may also be referred to herein as “this article.” [Ord. 2164, 4-1-85. Code 2001 § 95.55.]

8.15.180 Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Enforcement officer” means ~~the city manager or designee~~ the Code Enforcement Officer or any other person designated by the City Manager to enforce the provisions of the Newberg Municipal Code.

“Nuisance” means any act, status, condition, thing, substance or activity which is detrimental to, injurious to, or constitutes a danger to the public health, safety or welfare or which is declared, defined, designated or denominated to be a nuisance by any ordinance of the city.

“Person” means any natural person or persons, firm, partnership, association or corporation.

“Responsible party” means the person responsible for curing or remedying a nuisance and includes:

1. The owner of the property, ~~or the owner’s manager or agent,~~ or other person in control of the property on behalf of the owner;
2. The person occupying the property, including by not limited to, a ~~including~~ bailee, lessee, tenant or other person having possession;
3. The person who is alleged to have established, ~~or allowed,~~ or to continue the nuisance. [Ord. 2164, 4-1-85. Code 2001 § 95.56.]

8.15.190 Abatement notice.

A. If the enforcement officer is satisfied that a nuisance as defined in this chapter or any other ordinance of the city exists, the enforcement officer shall cause a notice to be posted on the premises or at the site of the nuisance directing the responsible party to abate the nuisance.

B. At the time of posting, the enforcement officer shall cause a copy of the notice to be forwarded by registered or certified mail, postage prepaid, to the responsible party at their last known address. The billing address contained in the City's utility billing system for the property shall be prima facie evidence of the address of the responsible party.

C. The notice to abate shall contain:

1. A description of the real property by street address or otherwise on which the nuisance exists.
2. A direction to abate the nuisance within 10 days from the date of the notice.
3. A description of the nuisance.
4. A statement that, unless the nuisance is removed, the city may abate the nuisance, and the cost of abatement shall be charged to the responsible party or assessed against the property, or both.
5. A statement that the responsible party may protest the order to abate by giving notice to the enforcement officer within 10 days from the date of the notice.
6. A statement that failure to abate a nuisance may result in a court action.

D. Upon completion of the posting and mailing, the enforcement officer posting and mailing shall execute and file certificates stating the date and place of the mailing and posting respectively.

E. An error in the name or address of the responsible party shall not make the notice void, and in such a case the posted notice shall be sufficient.

F. Personal service, proved by certificate of the enforcement officer, may be used in lieu of the above process for posting and mailing.

G. The date of posting or personal service shall be the date of the notice as that term is used in this article. [Ord. 2164, 4-1-85. Code 2001 § 95.57.]

8.15.200 Abatement by responsible party; Appeal and hearing procedures.

A. Within 10 days after the ~~posting and mailing~~ date of the notice as provided in NMC 8.15.190, a responsible party shall remove the nuisance or show that no nuisance exists.

B. A responsible party, protesting that no nuisance exists, shall file with the enforcement officer a written statement specifying the basis ~~for~~ of protesting and specifying a mailing address for receipt of notification of the hearing of the protest.

C. The statement shall be referred to the ~~city council~~ municipal court, which shall schedule the protest for a hearing and notify the protesting party by first class mail of the date and time of the hearing, as a part of the city council's regular agenda at its next succeeding meeting. At the time set for consideration of the ~~abatement~~ protest, the person

protesting may appear and be heard. ~~by the city council; and the city council~~ Hearings held under this section may be informal in nature, but the presentation of evidence in a hearing shall be consistent with the presentation of evidence required for contested cases as provided by ORS 183.450. The municipal court shall determine whether or not a nuisance ~~in fact~~ exists. The standard of proof shall be a preponderance of the evidence. ; ~~and the determination shall be required only in those cases where a written statement has been filed as provided.~~

D. If the ~~city council~~ municipal court determines that a nuisance ~~does in fact~~ exists, a responsible party shall, within 10 days, or such other reasonable time ordered by the municipal court, ~~after city council determination,~~ abate the nuisance.

E. Review of decision. Judicial review of the municipal court determination shall exclusively be taken by way of writ of review (ORS 34.010 et seq.).

F. Alternate dispute resolution. If, in the judgment of the municipal court, the protest appears reasonably capable of resolution through an alternate dispute resolution process, the municipal court may abate the protest hearing for a time period, not to exceed 60 days, to allow the parties to pursue settlement. The municipal court retains jurisdiction of the matter and any proposed settlement shall be submitted to the municipal court for review and approval.

[Ord. 2164, 4-1-85. Code 2001 § 95.58.]

8.15.210 Abatement by city.

A. If, within the time allowed, the nuisance has not been abated by a responsible party, the ~~city council may cause the nuisance to be abated~~ municipal court may authorize the city to abate the nuisance.

B. The enforcement officer and city employees assisting the enforcement officer charged with abatement of the nuisance shall have the right at reasonable times to enter into and upon the property in accordance with law to investigate or cause the removal of a nuisance.

C. The enforcement officer shall keep an accurate record of the expense incurred by the city in physically abating the nuisance, and shall include therein a charge of 25 percent of the expense for administration overhead. [Ord. 2164, 4-1-85. Code 2001 § 95.59.]

8.15.220 Assessment of costs.

A. The enforcement officer, by registered or certified mail, postage prepaid, or by personal service, shall forward to a responsible party a notice stating:

1. The total cost of abatement and inspections, including the administrative overhead.
2. That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.
3. That if the responsible party objects to the cost of the abatement as indicated, they may file a written ~~notice of objection~~ statement with the enforcement officer not more than 10

days from the date of the notice. The statement shall be referred to the municipal court which will schedule a hearing to consider the objection.

B. ~~Upon the expiration of 10 days after the date of the notice, the city council, in the regular course of business at its next succeeding meeting~~ The municipal court shall hear and determine any ~~objective~~ objections to the costs to be assessed. If the municipal court determines the costs of abatement to be correct, or if no objection is received, the municipal court may enter a judgment for the reasonable costs to be assessed.

C. If the costs of the abatement are not paid within 30 days from the date of the notice, or such other reasonable time ordered by the municipal court, an assessment of the costs as stated or as determined by the ~~city council~~ municipal court ~~shall be made by resolution~~ and shall thereupon be entered in the docket of city liens; and upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated.

D. The lien shall be enforced in the same manner as liens for street improvements and shall bear interest at the rate of 12 percent per annum. The interest shall commence from the date of the entry in the lien docket.

E. An error in the name of the responsible party shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid lien against the property. [Ord. [2164](#), 4-1-85. Code 2001 § 95.60.]

8.15.230 Abatement – Joint responsibility.

If there is more than one responsible party, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance. [Ord. [2164](#), 4-1-85. Code 2001 § 95.61.]

8.15.240 Summary abatement.

The procedure provided by this article is not exclusive, but is in addition to procedures provided by other ordinances, and an enforcement officer may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property. [Ord. [2164](#), 4-1-85. Code 2001 § 95.62.]

8.15.250 Nonexclusive remedy.

The procedures and remedies contained in this article shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statutes or state law which are intended to alleviate ordinance violations or abate nuisances, and the procedures set forth in this article shall not be prerequisites for utilizing any of said alternative remedies. [Ord. [2164](#), 4-1-85. Code 2001 § 95.63.]

Cross-reference: See ORS [105.555](#) and [105.550](#) – [105.600](#) for nuisance abatement.



ORDINANCE NO. 2015-2781

AN ORDINANCE AMENDING THE UNIFORM NUISANCE ABATEMENT PROCEDURE IN NMC § 8.15.170 ET SEQ. BY PROVIDING AN APPEAL PROCESS IN THE MUNICIPAL COURT, REPLACING THE APPEAL PROCESS TO THE CITY COUNCIL

RECITALS:

1. Newberg Municipal Code, Chapter 8, Article IV (NMC 8.15.170 et. seq.) is the city's uniform nuisance abatement procedure.
2. The current code provides that persons appealing or protesting a nuisance abatement notice are provided an appeal to the city council. The code requires the appeal to be heard at the next scheduled council meeting.
3. City council meetings are not the appropriate forum for consideration of nuisance appeals.
4. Newberg Municipal Code, Chapter 8, Article V (NMC 8.15.260) provides that acts defined as nuisances by the NMC constitute Class 2 civil infractions that may be cited under the uniform civil infractions procedures ordinance, Chapter 2.30 NMC. Those infractions are cited into the Newberg Municipal Court.
5. The ordinance changes will uniformly designate municipal court as the forum of nuisance enforcement and bring clarity to the process.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

Section 1. The Code of Newberg, Chapter 8, Article IV is repealed, and the new language is adopted to read as follows:

Article IV. Uniform Nuisance Abatement Procedure

8.15.170 Establishment, purpose and title.

A. A uniform nuisance abatement procedure is established and continued to simplify the abatement of nuisances existing in the city.

B. This article shall be known and referred to as the uniform nuisance abatement procedure ordinance and may also be referred to herein as "this article." [Ord. [2164](#), 4-1-85. Code 2001 § 95.55.]

8.15.180 Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“Enforcement officer” means the Code Enforcement Officer or any other person designated by the City Manager to enforce the provisions of the Newberg Municipal Code.

“Nuisance” means any act, status, condition, thing, substance or activity which is detrimental to, injurious to, or constitutes a danger to the public health, safety or welfare or which is declared, defined, designated or denominated to be a nuisance by any ordinance of the city.

“Person” means any natural person or persons, firm, partnership, association or corporation.

“Responsible party” means the person responsible for curing or remedying a nuisance and includes:

1. The owner of the property, the owner’s manager or agent, or other person in control of the property on behalf of the owner;
2. The person occupying the property, including by not limited to, a bailee, lessee, tenant or other person having possession;
3. The person who is alleged to have established, allowed, or continues the nuisance. [Ord. [2164](#), 4-1-85. Code 2001 § 95.56.]

8.15.190 Abatement notice.

A. If the enforcement officer is satisfied that a nuisance as defined in this chapter or any other ordinance of the city exists, the enforcement officer shall cause a notice to be posted on the premises or at the site of the nuisance directing the responsible party to abate the nuisance.

B. At the time of posting, the enforcement officer shall cause a copy of the notice to be forwarded by registered or certified mail, postage prepaid, to the responsible party at their last known address. The billing address contained in the city’s utility billing system for the property shall be prima facie evidence of the address of the responsible party.

C. The notice to abate shall contain:

1. A description of the real property by street address or otherwise on which the nuisance exists.
2. A direction to abate the nuisance within 10 days from the date of the notice.
3. A description of the nuisance.
4. A statement that, unless the nuisance is removed, the city may abate the nuisance, and the cost of abatement shall be charged to the responsible party or assessed against the property, or both.

5. A statement that the responsible party may protest the order to abate by giving notice to the enforcement officer within 10 days from the date of the notice.

6. A statement that failure to abate a nuisance may result in a court action.

D. Upon completion of the posting and mailing, the enforcement officer posting and mailing shall execute and file certificates stating the date and place of the mailing and posting respectively.

E. An error in the name or address of the responsible party shall not make the notice void, and in such a case the posted notice shall be sufficient.

F. Personal service, proved by certificate of the enforcement officer, may be used in lieu of the above process for posting and mailing.

G. The date of posting or personal service shall be the date of the notice as that term is used in this article. [Ord. [2164](#), 4-1-85. Code 2001 § 95.57.]

8.15.200 Abatement by responsible party; Appeal and hearing procedures.

A. Within 10 days after the date of the notice as provided in NMC [8.15.190](#), a responsible party shall remove the nuisance or show that no nuisance exists.

B. A responsible party, protesting that no nuisance exists, shall file with the enforcement officer a written statement specifying the basis of protest and specifying a mailing address for receipt of notification of the hearing of the protest.

C. The statement shall be referred to the municipal court, which shall schedule the protest for a hearing and notify the protesting party by first class mail of the date and time of the hearing. At the time set for consideration of the protest, the person protesting may appear and be heard. Hearings held under this section may be informal in nature, but the presentation of evidence in a hearing shall be consistent with the presentation of evidence required for contested cases as provided by ORS 183.450. The municipal court shall determine whether or not a nuisance exists. The standard of proof shall be a preponderance of the evidence.

D. If the municipal court determines that a nuisance exists, a responsible party shall, within 10 days, or such other reasonable time ordered by the municipal court, abate the nuisance.

E. Review of decision. Judicial review of the municipal court determination shall exclusively be taken by way of writ of review (ORS 34.010 et seq.).

F. Alternate dispute resolution. If, in the judgment of the municipal court, the protest appears reasonably capable of resolution through an alternate dispute resolution process, the municipal court may abate the protest hearing for a time period, not to exceed 60 days, to allow the parties to pursue settlement. The municipal court retains jurisdiction of the matter and any proposed settlement shall be submitted to the municipal court for review and approval.

[Ord. [2164](#), 4-1-85. Code 2001 § 95.58.]

8.15.210 Abatement by city.

A. If, within the time allowed, the nuisance has not been abated by a responsible party, the municipal court may authorize the city to abate the nuisance.

B. The enforcement officer and city employees assisting the enforcement officer charged with abatement of the nuisance shall have the right at reasonable times to enter into and upon the property in accordance with law to investigate or cause the removal of a nuisance.

C. The enforcement officer shall keep an accurate record of the expense incurred by the city in physically abating the nuisance, and shall include therein a charge of 25 percent of the expense for administration overhead. [Ord. [2164](#), 4-1-85. Code 2001 § 95.59.]

8.15.220 Assessment of costs.

A. The enforcement officer, by registered or certified mail, postage prepaid, or by personal service, shall forward to a responsible party a notice stating:

1. The total cost of abatement and inspections, including the administrative overhead.
2. That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.
3. That if the responsible party objects to the cost of the abatement as indicated, they may file a written statement with the enforcement officer not more than 10 days from the date of the notice. The statement shall be referred to the municipal court which will schedule a hearing to consider the objection.

B. The municipal court shall hear and determine any objections to the costs to be assessed. If the municipal court determines the costs of abatement to be correct, or if no objection is received, the municipal court may enter a judgment for the reasonable costs to be assessed.

C. If the costs of the abatement are not paid within 30 days from the date of the notice, or such other reasonable time ordered by the municipal court, an assessment of the costs as stated or as determined by the municipal court shall thereupon be entered in the docket of city liens; and upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated.

D. The lien shall be enforced in the same manner as liens for street improvements and shall bear interest at the rate of 12 percent per annum. The interest shall commence from the date of the entry in the lien docket.

E. An error in the name of the responsible party shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void; but it shall remain a valid lien against the property. [Ord. [2164](#), 4-1-85. Code 2001 § 95.60.]

8.15.230 Abatement – Joint responsibility.

If there is more than one responsible party, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance. [Ord. [2164](#), 4-1-85. Code 2001 § 95.61.]

8.15.240 Summary abatement.

The procedure provided by this article is not exclusive, but is in addition to procedures provided by other ordinances, and an enforcement officer may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property. [Ord. 2164, 4-1-85. Code 2001 § 95.62.]

8.15.250 Nonexclusive remedy.

The procedures and remedies contained in this article shall not be read to prohibit in any way any alternative remedies set out in ordinances or state statutes or state law which are intended to alleviate ordinance violations or abate nuisances, and the procedures set forth in this article shall not be prerequisites for utilizing any of said alternative remedies. [Ord. 2164, 4-1-85. Code 2001 § 95.63.]

Cross-reference: See ORS 105.555 and 105.550 – 105.600 for nuisance abatement.

Section 2. Unless amended above, all remaining provisions of the NMC remain in full force and affect.

Section 3. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs or clauses.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: June 4, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of May, 2015, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Sue Ryan, City Recorder

ATTEST by the Mayor this _____ day of May, 2015.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 4, 2015

Order ___ Ordinance XX Resolution ___ Motion ___ Information ___
No. No. 2015-2783 No.

SUBJECT: An Ordinance Authorizing Full Faith and Credit Refunding Bonds.

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

HEARING TYPE: LEGISLATIVE QUASI-JUDICIAL NOT APPLICABLE

RECOMMENDATION:

Adopt Ordinance No. 2015-2783 authorizing Full Faith and Credit Refunding Bonds.

EXECUTIVE SUMMARY:

On April 6, 2014, a City Council Work Session was held regarding a proposal to refinance some current debt of the City. The debt consists of six total loans. Five loans were used for water and wastewater infrastructure improvements, and the other was the certificate of participation used to finance the reconstruction of City Hall in 1999.

Interest rates are near historic loans and there is an opportunity to refinance the existing debt at a lower interest rate, resulting in substantial savings to the City. That amount is outlined in the Fiscal Impact statement, below. This ordinance merely authorizes refinancing existing debt, not incurring additional debt. The proposed refinancing does not extend the repayment schedule of the existing loans, but will result in the loan period being shortened.

By approval of the ordinance, the Council authorizes the issuance of revenue bonds in an amount sufficient to refund all or any portion of the prior debt, and to pay estimated costs related to the Refunding Bonds. Pursuant to ORS 287A.315, the Refunding Bonds authorized by this ordinance will be payable from all lawfully available funds of the City, and shall be secured by the City's full faith and credit and taxing power within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution.

By approval of this ordinance, the Council will be delegating to the City Manager, the City Attorney, and Finance Director, the authority to act on behalf of the City to accomplish the refinancing, without further Council action, but under terms, substantially as proposed.

FISCAL IMPACT:

The preliminary estimate of the net present value benefit of refunding the proposed debt is approximately \$850,000. However, actual savings will differ based on the market conditions at the time of sale, which is scheduled for late June. The new bonds will carry similar debt service payments to the existing loans, with the lower interest costs resulting in earlier payoff dates, rather than the savings being used to reduce annual debt service payments. The accelerated payoff produces a greater net savings to the City. The majority of the savings will be recognized by the water and wastewater programs in approximately 10 years. The remainder of the savings will be recognized by multiple funds that contribute to the City Hall debt and will be recognized in approximately five years.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

This ordinance contributes to a sustainable budget. (Council goal 7 – Manage and operate the City government in an efficient and effective manner)



ORDINANCE NO. 2015-2783

AN ORDINANCE AUTHORIZING FULL FAITH AND CREDIT REFUNDING BONDS

RECITALS:

1. **WHEREAS**, the City of Newberg, Oregon (the “City”) is authorized to issue revenue bonds for a public purpose by ORS 287A.150 (the “Act”), which states that those bonds may be payable from all or any portion of the “revenue” of the City, as defined in ORS 287A.001(16); and,
2. **WHEREAS**, ORS 287A.001(16) defines “revenue” to mean all fees, tolls, excise taxes, assessments, property taxes and other taxes, rates, charges, rentals and other income or receipts derived by a public body or to which a public body is entitled; and,
3. **WHEREAS**, the City may be able to obtain debt service savings by issuing revenue bonds under the Act that are secured by all lawfully available funds of the City and a pledge of the City’s full faith and credit and taxing power as permitted by ORS 287A.315 to refund all or any portion of the City’s outstanding:
 - a. loan B98006 from Business Oregon entered into in 1998 in the original principal amount of \$1,000,000 and outstanding in the approximate amount of \$216,906 issued to finance water and sewer system improvements;
 - b. loan K02006 from Business Oregon entered into in 2002 in the original principal amount of \$4,700,000 and outstanding in the approximate amount of \$2,318,577 issued to finance water system improvements;
 - c. loan G04002 from Business Oregon entered into in 2003 in the original principal amount of \$2,810,000 and outstanding in the approximate amount of \$903,888 issued to finance wastewater system improvements;
 - d. loan B06001 from Business Oregon entered into in 2007 in the original principal amount of \$2,644,815 and outstanding in the approximate amount of \$1,848,817 issued to finance water system improvements;
 - e. loan K05007 from Business Oregon entered into in 2007 in the original principal amount of \$6,670,000 and outstanding in the approximate amount of \$4,656,840 issued to finance water system improvements;
 - f. Certificates of Participation (City Hall Project), 1999 Series A dated 1999 issued in the original principal amount of \$3,550,000 and outstanding in the approximate principal amount of \$1,095,000 issued to finance the renovation, repair and expansion of City Hall (collectively, the “Refunding Candidates”); and,

4. **WHEREAS**, the City may authorize revenue bonds under the Act by nonemergency ordinance, but may not sell the revenue bonds under the Act until the period for referral of the nonemergency ordinance authorizing the revenue bonds has expired; and,
5. **WHEREAS**, if a nonemergency ordinance authorizing the revenue bonds is referred, the City may not sell the revenue bonds unless the voters approve the revenue bonds; now, therefore,

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

SECTION 1. Refunding Bonds. The City hereby authorizes the issuance of revenue bonds (the “Refunding Bonds”) pursuant to the Act to refund all or a portion of the Refunding Candidates.

- A. The Refunding Bonds may be issued in an amount sufficient to refund all or any portion of the Refunding Candidates and to pay estimated costs related to the Refunding Bonds.
- B. Pursuant to ORS 287A.315, the Refunding Bonds authorized by this Section 1 shall be payable from all lawfully available funds of the City, and shall be secured by the City’s full faith and credit and taxing power within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution.

SECTION 2. Delegation. The City Manager, the City Attorney, the Finance Director or the person designated by the City Manager to act on behalf of the City under this ordinance (each of whom is referred to in this ordinance as a “City Official”) may, on behalf of the City and without further action by the Council:

- A. Issue the Refunding Bonds in one or more series, which may be sold at different times.
- B. Participate in the preparation of, authorize the distribution of, and deem final preliminary and final official statements or other disclosure documents for each series of the Refunding Bonds.
- C. Subject to the limits in this ordinance, establish the final principal amounts, maturity schedules, interest rates, sale prices, redemption terms, payment terms and dates, record dates and other terms for each series of the Refunding Bonds, and negotiate the sale of any series with Wedbush Securities.
- D. Undertake to provide continuing disclosure for any series of the Refunding Bonds in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission.
- E. Finalize the terms of, execute, and deliver bond declarations or other documents that describe the terms of each series of the Refunding Bonds. The bond declarations or other documents may also contain covenants for the benefit of the owners.
- F. Select the Refunding Candidates that will be refunded, and take action to call and refund the Refunding Candidates that will be refunded.
- G. Appoint and enter into agreements with service providers for the Refunding Bonds, including verification agents and escrow agents, if appropriate, to accomplish the refunding.
- H. Apply for one or more ratings for each series of Refunding Bonds, determine whether to purchase municipal bond insurance or obtain other forms of credit enhancements for each series of Refunding Bonds, enter into agreements with the providers of credit enhancement, and execute and deliver related documents.

- I. Issue any qualifying series of Refunding Bonds as “tax-exempt bonds” bearing interest that is excludable from gross income under the Internal Revenue Code of 1986, as amended, (the “Code”) and enter into covenants for the benefit of the owners of those series to maintain the excludability of interest on those series from gross income under the Code.
- J. Issue any qualifying series of Refunding Bonds as “federal subsidy bonds” that are eligible for federal interest rate subsidies but bear interest that is includable in gross income under the Code and take any actions that are required to qualify for those federal interest rate subsidies.
- K. Issue any series of Refunding Bonds as “taxable bonds” bearing interest that is includable in gross income under the Code.
- L. Designate any series of Refunding Bonds as a qualified tax-exempt obligation pursuant to Section 265(b)(3) of the Code, if applicable.
- M. Execute any documents and take any other action in connection with the Refunding Bonds that the City Official finds will be advantageous to the City.
- N. To the extent that any agreements, contracts or other documents have been entered into, in connection with the preliminary steps necessary to issuance of the Refunding Bonds, the Council hereby ratifies the action of the City Manager or designee.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: June 3, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of May, 2015, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Sue Ryan, City Recorder

ATTEST by the Mayor this ____ day of May, 2015.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 4, 2015

Order ___	Ordinance ___	Resolution <u>XX</u>	Motion ___	Information ___
No.	No.	No. 2015-3186		

SUBJECT: Direct the Newberg Affordable Housing Commission to return with recommendations to amend Resolution No. 2012-2988

**Contact Person (Preparer) for this Motion: Jessica Pelz, AICP
 Dept.: Community Development**

RECOMMENDATION: Adopt Resolution No. 2015-3186, directing the Newberg Affordable Housing Commission to return with specific recommendations for amendments to Resolution No. 2012-2988 to better administer the Newberg Affordable Housing Trust Fund.

EXECUTIVE SUMMARY: In March 2012, the City Council adopted Ordinance No. 2012-2749 establishing the Newberg Affordable Housing Trust Fund (NAHTF), and in April 2012, the City Council adopted Resolution No. 2012-2988 establishing policies and procedures for administration of the NAHTF. The purpose of the NAHTF is to support the development, preservation, and rehabilitation of housing that is affordable to citizens of Newberg with incomes below the area median income.

Resolution No. 2012-2988 specified three distinct funding programs within the NAHTF: the competitive awards program, which can be either grants or loans; the time sensitive loan program; and the rental rehabilitation loan program. The Resolution includes specifics details for the three programs, including eligibility, loan terms, and process. In October 2014, city staff contacted the Mid-Willamette Valley Council of Governments (COG) to discuss staffing assistance for the NAHTF. The COG prepared a memo with a proposed scope of work and with several recommendations to help grow the NAHTF, which is included as Exhibit “A” to this Resolution. Their specific recommendations include:

- Require a larger fund match/leveraging from applicant rather than allowance of up to 100% of project costs (section 6.2).
- Amend the specified interest rates to allow for more flexibility (sections 7.2.c and 7.3.c).
- Revise the terms and amortization schedule under rental rehabilitation loans to allow for shorter loan periods (section 7.3.c).

The Newberg Affordable Housing Commission (NAHC) held a meeting on January 27, 2015, to discuss the COG’s proposal. The NAHC voted to ask the City Council if they would be amenable to amending Resolution No. 2012-2988 to incorporate some or all of the COG’s recommendations. If City Council were amenable to amending the Resolution, the NAHC would return to Council with a proposal that incorporates some program flexibility and includes criteria for loan interest rates, a revised rate structure, and a revised amortization schedule.

FISCAL IMPACT: The COG’s proposed changes to the loan rates, rate structure, and amortization schedule are intended to increase the funds available for lending and enhance the city’s ability to grow the NAHTF.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): The NAHTF helps the city work toward meeting Goal 4 to “foster and encourage economic development in the community” by creating opportunities for workforce housing.



RESOLUTION No. 2015-3186

A RESOLUTION DIRECTING THE NEWBERG AFFORDABLE HOUSING COMMISSION TO RETURN WITH SPECIFIC RECOMMENDATIONS FOR AMENDMENTS TO RESOLUTION No. 2012-2988 TO BETTER ADMINISTER THE NEWBERG AFFORDABLE HOUSING TRUST FUND

RECITALS:

1. In March 2012, the City Council adopted Ordinance No. 2012-2749 establishing the Newberg Affordable Housing Trust Fund (NAHTF), and in April 2012, the City Council adopted Resolution No. 2012-2988 establishing policies and procedures for administration of the NAHTF. The purpose of the NAHTF is to support the development, preservation, and rehabilitation of housing that is affordable to citizens of Newberg with incomes below the area median income.
2. Resolution No. 2012-2988 specified three distinct funding programs within the NAHTF: the competitive awards program, which can be either grants or loans; the time sensitive loan program; and the rental rehabilitation loan program. The Resolution includes specifics details for the three programs, including eligibility, loan terms, and process. In response to discussions with city staff about administration of the NAHTF, the Mid-Willamette Valley Council of Governments (COG) prepared a memo with specific recommendations to help grow the NAHTF, including: require a larger fund match/leveraging from applicant rather than allowance of up to 100% of project costs; amend the specified interest rates to allow for more flexibility; and revise the terms and amortization schedule under rental rehabilitation loans to allow for shorter loan periods.
3. The Newberg Affordable Housing Commission (NAHC) held a meeting on January 27, 2015, to discuss the COG's proposal. The NAHC voted to ask the City Council if they would be amenable to amending Resolution No. 2012-2988 to incorporate some or all of the COG's recommendations. If City Council were amenable to amending the Resolution, the NAHC would return to Council with a proposal that incorporates some program flexibility and includes criteria for loan interest rates, a revised rate structure, and a revised amortization schedule.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The Newberg Affordable Housing Commission is hereby directed to return to City Council with a proposal to amend Resolution No. 2012-2988 to better administer the Newberg Affordable Housing Trust Fund.

2. Exhibit “A”, memo from the Mid-Willamette Valley Council of Governments, and Exhibit “B”, Resolution No. 2012-2988, are hereby attached and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 5, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of May, 2015.

Sue Ryan, City Recorder

ATTEST by the Mayor this 7th day of May, 2015.

Bob Andrews, Mayor

memo



Mid-Willamette Valley Council of Governments

To: Newberg Affordable Housing Commission (NAHC)
David Beam, Economic Development Planner

Date: December 10, 2014

From: Renata Wakeley, Community Development Director and
John Safstrom, Loan Program Manager
Mid Willamette Valley COG

Re: Newberg Affordable Housing Trust Fund Program

ISSUE:

The City of Newberg and the Newberg Affordable Housing Commission (NAHC) seek assistance from COG in staffing the Newberg Affordable Housing Trust Fund (NAHTF) Program.

BACKGROUND:

In March 2012, the Newberg City Council established the Newberg Affordable Housing Trust Fund (NAHTF) to support the development, preservation, and rehabilitation of housing that is affordable to the citizens of Newberg within incomes that do not exceed 100% of the area median income.

In October 2014, City of Newberg (CITY) staff contacted the Mid-Willamette Valley Council of Governments (COG) to discuss staffing assistance for the NAHTF as COG provides similar services in the area. Staff has provided a summary “responsible parties” or scope of work to better outline program responsibilities and a draft contract to provide said services for the City’s review and approval.

As COG manages a number of revolving loan funds in the area, additional suggestions on growing the NAHTF are described under the “Recommendations” section below.

RECOMMENDATIONS:

Considering the stated purpose of the NAHTF is, in part, to have a dedicated source of revenue to provide ongoing funding for housing projects and programs that address the housing needs of Newberg residents, the following recommendations are also provided for consideration by the NAHC and CITY:

- **Participation Rate:** Require larger fund match/leveraging from applicant rather than allowance of up to 100% of project costs as permitted under 6.2 of Resolution.
- **Interest Rates:** Requiring loan interest rates be set at 2% below prime has become problematic with our current lower rate environment. A suggested alternative could be a more flexible

policy, such as letting the NAHC set interest rates on a loan by loan basis. By using the alternative flexible interest rate policy, more program interest and principal income can be realized to relend to more parties.

- **Revise Terms/Amortization under Rental Rehabilitation Loans:** The current rate schedule is set at 7 years of 84 months. By reducing the repayment schedule/timeline, funds are revolved/returned more expediently to relend without major impact to the borrower. For example:
 - a) At \$4,000, a 60-month/1.75% loan would approximate a \$66/month repayment
 - b) At \$4,000, a 48-month/3.75% loan around approximate a \$90/month repayment.
- **Loan Review Procedures:** Work with the COG to create a streamlined loan application review and approval process with a goal of accommodating a 10-day turnaround response from date of a complete loan application. Suggested loan review procedures may be found in the draft scope of work. Upon finalizing a set of final loan review procedures, the COG will draft an agreement for loan administration services provided by the COG to CITY.
- **Grant Funding:** Authorize City staff, with assistance from COG, to pursue grant fund applications from various public and private foundations and granting programs to help grow the fund for future lending.

Attachments: 1. Sample CITY and COG contract/scope of work for staffing of the AHTF Program

**Newberg Affordable Housing Trust Fund Program –
Processing Roles & Responsibilities**

TASK 1: DEVELOPMENT OF NEEDED PROCESS AND FORMS (1 month)

1. Draft additional application forms for clients (for all three programs- annual competitive awards for affordable housing, time sensitive program for leveraging of funds, and rental housing rehab program) using the template from previous cycles and revised based upon staff comments;
2. Draft revised RFQ documents/solicitations related to yearly award processes (set to advertise yearly on or near July 1st of every year, as funds permit);
3. Draft informational materials and brochures regarding the three (3) programs;
4. Submit draft forms to staff and Newberg Affordable Housing Commission (NAHC) for final review and approval;
5. Finalize application forms, loans documents, brochures

NTE amount of \$1,600 billed at hourly rate of \$80 (estimated at 20 hours)

TASK 2: FUND ADMINISTRATION (ongoing)

1. **Staff all initial public inquiries regarding all loan programs and availability/guidelines**
 - Promote loan/grant programs
 - Respond to questions associated with the three (3) program purposes/uses/ approval criteria and loan brochure.
 - COG loan documenting servicing specialist.

Responsible party: CITY

2. **Lead annual competitive awards RFQ, application process and advertisements.**

Responsible party: CITY

3. **Application submissions and reviews**
 - CITY staff to conduct initial application submission reviews to determine if minimum eligibility criteria are met.
 - CITY staff to provide technical assistance on submitted application.
 - COG to staff Newberg Affordable Housing Commission (NAHC) meetings and review of applications and write staff reports to NAHC
 - COG to staff NAHC meetings and presentations by applicants, as requested by CITY
 - COG to assist NAHC in recommendations to Newberg City Council (for all 3 programs)

Responsible party: COG/CITY/Newberg Affordable Housing Commission (NAHC)

4. City Council decision

- City Council reviews the COG memo/ NAHC recommendation and makes the final decision on the application.
- COG staff to be available to attend City Council meetings, as requested

Responsible party: COG/City Council

5. COG drafts the loan documents

- If the City Council approves the loan, the COG prepares the draft loan documents for signature review.

Responsible party: COG

6. City reviews & comments on the draft loan documents

- The COG sends the draft loan documents to the City Planning & Building Director, or designee to circulate to the appropriate city staff for their review.
- City reviews and submits any comments or concerns about the documents to the COG (target city review time: 1 week).

Responsible party: City

7. COG prepares the final loan documents.

- COG incorporates any changes needed to the loan documents.

Responsible party: COG

8. Borrower signs documents.

- If the loan involves real estate transaction, borrower signs documents at the escrow company's office.

Responsible party: Borrower, COG

9. Loan is funded.

- COG sends documents to the city to sign.

Responsible party: City, COG

10. Loan servicing

- CITY staff conducts servicing of yearly loan payments (invoices and collection)
- COG staff conducts loan term compliance reviews and monitoring such as current insurance on property, property taxes current, etc. on an annual basis

Responsible party: City, COG

11. Loan closeout

Responsible Party: COG staff drafts all loan closeout documentation for CITY signatures and recording.

Compensation Details

1. **Technical assistance and loan collection assistance activities** when requested by **CITY** staff shall be compensated at the professional Loan Officer hourly rate of \$87.00 and the Loan Documentation and Servicing Specialist hourly rate of \$50.00 (which includes salary and all overhead costs including travel).
2. **Loan packaging and closing activities** shall be compensated at the professional Loan Officer hourly rate of \$87.00 and the Loan Documentation and Servicing Specialist hourly rate of \$50.00 (which includes salary and all overhead costs including travel)
3. **Loan servicing and reporting activities**, which include monitoring and verifying the provisions of all loan agreements, maintaining current documentation of insurance and tax payments, collecting and reviewing financial statements from each borrower on at least an annual basis, and preparing and annual loan program activity report to the **CITY**, **COG** shall be compensated at the professional Loan Officer hourly rate of \$87.00 and the Loan Documentation and Servicing Specialist hourly rate of \$50.00 (which includes salary and all overhead costs including travel)
4. As requested by the **CITY**, the **COG** Loan Program Manager shall be compensated at the hourly rate of \$100 (which include salary and all overhead costs including travel).



RESOLUTION No. 2012-2988

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

RECITALS:

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

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

SECTION 1. Purpose

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

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

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

SECTION 2. Eligible Applicants

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

SECTION 3. Eligible Uses and Activities

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

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

Eligible rehabilitation and emergency repair costs include but are not limited to:

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

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

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

SECTION 4. Program Goals

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

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

SECTION 5. Fund Administration

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

- 5.1 The City of Newberg acts as fiduciary agent and administrator of the funds. The city reserves the right to contract certain tasks to most effectively and efficiently achieve its administrative duties.
- 5.2 Funds dedicated to the Newberg Affordable Housing Trust Fund shall be exclusively reserved to support the eligible uses activities identified in Section 3, and shall not be used for the general operation of the city.
- 5.3 The City of Newberg shall accept requests for funding from the NAHTF’s Time Sensitive Loan Program from eligible applicants at anytime in order to accommodate affordable housing project opportunities that are time sensitive. Coordination with other private and government funding application timelines will help ensure that NAHTF funds are best applied to leverage additional resources in support of the housing projects. Project submittals deemed not time-sensitive will not be approved, but the applicant will be encouraged to submit their proposal to the annual request for

proposals (RFP) funding process under the NAHTF's Competitive Awards Program. Also, eligible applicants may submit proposals to the NAHTF's Rental Rehabilitation Loan Program at any time.

- 5.4 The City of Newberg shall annually issue a notice of funding available (NOFA) to announce the availability of funds. The City shall also issue a request for proposals (RFP) for affordable housing projects that are not time sensitive.
- 5.5 As a target in any given year, up to 80 percent of the NAHTF will be available for project loans and up to 5 percent will be available for project grants. The remaining 15 percent of the NAHTF will be available for project contingencies through grants and/or loans.
- 5.6 In any given year, at least 50% of the available funds within the NAHTF shall be available for use through the competitive awards program. In any given year, the city council may make an exception to this standard to take advantage of affordable housing opportunities.
- 5.7 The City of Newberg shall form an Affordable Housing Commission (AHC) that consists of three members appointed by the Mayor with the consent of the city council. Membership of the commission should reflect representative broad interests regarding affordable housing in the community. The commission shall review applications for Newberg Affordable Housing Trust Funds to determine project eligibility and evaluate the applications based on the selection criteria. The commission shall provide recommendations to the city council who shall make final award decisions. In addition, the commission shall meet annually to prepare the NAHTF's annual NOFA and RFP for consideration of approval by the city council. Otherwise, the commission will meet as necessary during the year.
- 5.8 Newberg Affordable Housing Trust Funds will be allocated in a manner consistent with the threshold criteria provided Section 8, and consistent with state and local public contracting law.
- 5.9 Grant monies received into the NAHTF will have five percent of those monies reserved for administration.

SECTION 6. Match Requirements

- 6.1 The Newberg Affordable Housing Trust Fund is intended to support the development of needed housing. In addition, the City of Newberg believes that projects can become stronger and more successful through the partnership of many organizations. Therefore, the following match requirements apply to projects utilizing grants from the NAHTF.
 - 6.1.a The Newberg Affordable Housing Trust Fund grant contribution shall not exceed 50% of the total project or program cost. Required match can be met utilizing government funding, direct contribution from the applicant, private donations, and the contribution of land, materials or labor to the project.
 - 6.1.b In the case that land previously owned by the applicant is considered as required match, the value of the land shall be determined by a city approved certified appraisal completed by the applicant or real market value from the Yamhill County assessor office provided by the applicant, unless otherwise directed in Oregon Revised Statute or Newberg Municipal Code.

- 6.1.c** The valuation of land, and available equity to be considered as matching funds, shall be verified by the city prior to the disbursement of an NAHTF grant when its value is considered as required matching funds.
- 6.1.d** Donated materials and labor, which are proposed as required match through the development of a project shall have their value estimated at the time of application. The actual value of these contributions is subject to verification by the city at completion of the project.
- 6.1.e** Award recipients shall provide verifiable accounting for donated labor and materials, when such was necessary to satisfy the NAHTF match requirements.
- 6.1.f** If a recipient of an NAHTF grant has been deemed by the city to have failed to have fulfilled all the necessary grant award match requirements, the city may require a full or partial repayment of any NAHTF grants awarded to a project.

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

SECTION 7. Allocation of Funds

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

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

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

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

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

7.1 Competitive Awards Program

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

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

- 7.1.a** The City of Newberg may issue an RFP Request for proposals on an annual basis depending on availability of funds, providing applicants with a minimum of 45 days to respond to the request. The RFP shall be issued on or near July 1st of the year.
- 7.1.b** City staff shall assess the project proposals to determine if the eligibility criteria are met and shall develop a recommendation to provide to the Newberg Affordable Housing Commission and the city council.
- 7.1.c** The Newberg Affordable Housing Commission will provide applicants the opportunity to make a presentation on their project proposal and provide community members the opportunity to comment by holding a public meeting.
- 7.1.d** The Newberg Affordable Housing Commission will develop an award recommendation to the city council using the NAHTF criteria to determine which projects best meet the city's spending priorities. Each application will be rated on a numeric scale as established in the annual RFP for each criterion of selection (Section 8).
- 7.1.e** The Newberg city council shall make a final decision on the award of Newberg Affordable Housing Trust Funds.
- 7.1.f** The City of Newberg shall prepare an agreement between the city and the award recipient. The agreement shall outline the conditions of award and shall be executed prior to the disbursement of any Newberg Affordable Housing Trust Funds.
- 7.1.g** An award granted to an applicant may be rescinded by the city if the applicant does not initiate the activities identified in response to the RFP in advance of the City's issuance of another RFP.

7.2 Time Sensitive Loan Program

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

- 7.2.a** Project Eligibility. Projects are eligible to utilize funds for activities listed in Section 3.

7.2.b Project Security. Applicant must demonstrate and commit sufficient collateral to ensure the security of the loan.

7.2.c Loan Terms.

- (1) Loan amounts will be determined by the proposed project need and amount available within the NAHTF.
- (2) The standard interest rate is two percent (2%) below the prime rate.
- (3) The standard term of the loan is two years.
- (4) The applicant shall pay a loan processing fee equal to one percent (1%) of the loan or \$100.00, whichever is greater.
- (5) Standard loan terms may be modified by approval of the City Council.
- (6) The applicant shall enter into an agreement guaranteeing the dwellings will only be occupied by families or individuals meeting the income guidelines.

7.2.d Process.

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

7.3 Rental Rehabilitation Loan Program

7.3.a Purpose

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

7.3.b Eligibility

- (1) The dwelling must be within the Newberg city limits.
- (2) The dwelling must be rented to low or very low income families or individuals, according to income guidelines established by the Affordable Housing Commission. Preference will be given to units to be rented to very low income families or individuals.
- (3) Repairs shall improve the overall livability of the dwelling by addressing health and safety issues and by making the home more energy efficient and affordable. Priority is placed on the repairs needed to make the home safe and to prevent further deterioration and escalated costs if left unattended. Typical examples of these projects include new roofs, new windows, new electrical wiring, heating system repair/replacement, and utility repairs.

- (4) The applicant shall demonstrate sufficient equity in the property and sufficient ability to repay the loan.
- (5) The applicant shall demonstrate that the rehabilitation could not be accomplished using conventional loan programs.
- (6) Preference shall be given to landlords who live in Newberg or the Newberg area, and who own 10 or fewer rental units, and who own the property outright or have substantial equity in the property.

7.3.c Loan Terms

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

7.3.d Process

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

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

- 8.1** The project is considered an eligible use or activity under Section 3, and benefits households earning less than 100% the area median income (threshold verification).
- 8.2** If the project is related to the provision of technical assistance to affordable housing providers, the use of Newberg Affordable Housing Trust Funds functions to increase the capacity of the organization to specifically address the mission of the NAHTF (threshold verification).
- 8.3** Newberg Affordable Housing Trust Funds shall be limited to the minimum amount necessary to complete the project. The lower the percentage of NAHTF funds requested, relative to the full project costs, the higher ranking the project shall be given.

- 8.4** The project addresses the unmet housing needs as identified in the Housing Element of the Newberg Comprehensive Plan.
- 8.5** The lower the income level that is targeted for the benefitting households, the higher the ranking the project shall be given.
- 8.6** The project provides new affordable housing, or new affordability, through retention or rehabilitation of existing housing, within the city. The greater the number of units provided, the higher the ranking the project shall be given.
- 8.7** The project retains the affordable housing units as affordable. The longer period of time the units remain affordable, the higher ranking the project shall be given.
- 8.8** The project addresses energy conservation through the integration of green building technologies in new construction, or achieves greater energy efficiency through rehabilitation of existing housing.
- 8.9** The project maximizes partnerships in the community (volunteers, in-kind contributions, cash contributions, multiple organization involved, etc).
- 8.10** The project utilizes already existing resources in effective and innovative ways. The project shall not duplicate service provided by another organization.
- 8.11** The agency submitting the proposal has the capacity to carry out the project and has had demonstrated successes completing projects of similar scope.
- 8.12** The budget and timeline are thorough and realistic.
- 8.13** The project is ready for implementation.
- 8.14** If the project includes the acquisition of property, the identified property is currently available for acquisition and the applicant has secured either a purchase option or letter of interest from the seller. If the applicant is also applying for federal funding (i.e. Community Development Block Grants or HOME) they should carefully review procurement requirements and limitations before obtaining a purchase option.
- 8.15** The relocation of existing residents will be minimized, and when necessary, the applicant has included accurate relocation assistance costs as part of the project pro forma.
- 8.16** The proposal demonstrates that Newberg Affordable Housing Trust Funds are the most appropriate funding source, and necessary, for the project.
- 8.17** Additional selection criteria may be developed and included in the annual RFP to best direct Newberg Affordable Housing Trust Funds toward an identified priority need. Numeric rankings for each of the selection criteria shall be incorporated into the annual RFP.

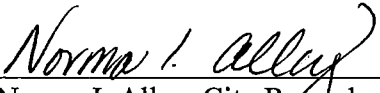
SECTION 9. Fund Revenue

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

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

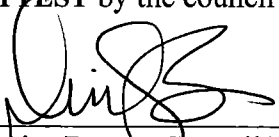
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 17, 2012.

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



Norma I. Alley, City Recorder

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



Denise Bacon, Council President

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 4, 2015

Order ___	Ordinance ___	Resolution <u>XX</u>	Motion ___	Information ___
No.	No.	No. 2015-3187		

SUBJECT: Authorize City Manager to contract with the Mid-Willamette Valley Council of Governments to administer Newberg’s Affordable Housing Trust Fund Program

**Contact Person (Preparer) for this Motion: Jessica Pelz, AICP
 Dept.: Community Development**

RECOMMENDATION: Adopt Resolution No. 2015-3187 authorizing the City Manager to enter into a Professional Services Agreement with the Mid-Willamette Valley Council of Governments to administer Newberg’s Affordable Housing Trust Fund Program.

EXECUTIVE SUMMARY: In March 2012, the City Council adopted Ordinance No. 2012-2749 establishing the Newberg Affordable Housing Trust Fund (NAHTF), and in April 2012, the City Council adopted Resolution No. 2012-2988 establishing policies and procedures for administration of the NAHTF. The purpose of the NAHTF is to support the development, preservation, and rehabilitation of housing that is affordable to citizens of Newberg with incomes below the area median income.

Resolution No. 2012-2988 specified three distinct funding programs within the NAHTF: the competitive awards program, which can be either grants or loans; the time sensitive loan program; and the rental rehabilitation loan program. In October 2014, city staff contacted the Mid-Willamette Valley Council of Governments (COG) to discuss staffing assistance with the overall program as the COG has experience with administering similar programs, including Newberg’s Economic Development Revolving Loan Fund. The COG put together a memo detailing recommendations to grow the NAHTF, and included an attachment with a preliminary scope of work for the program, which is included as Exhibit “A” to this Resolution.

Staff would like to proceed to contract with the COG to administer the NAHTF. This would include: authorizing the COG to proceed with Task 1 as outlined in the proposed scope of work to develop needed process and forms for all three programs; authorizing the COG to pursue grant fund applications from various public and private programs to help grow the fund; and revising the proposed scope to authorize the COG to do the bulk of the tasks identified in Task 2, specifically amending tasks 1 and 2 within Task 2 to be COG responsibilities. The COG would also be tasked with staffing the Newberg Affordable Housing Commission regular meetings as part of the contract.

FISCAL IMPACT: Task 1 is identified in the draft scope of work as costing approximately \$1600.00, and all other tasks would be billed at an hourly rate as identified in the compensation details section of the scope of work. Staff estimates administration of the program overall could cost up to \$5000.00, and recommends authorizing a professional services contract with the COG for a not to exceed amount of \$5000.00 through June 30, 2016, with the funds coming from account 14-4120-580000 (Economic Development Professional Services). At that time, the contract could be reassessed and renewed as necessary.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): The NAHTF helps the city work toward meeting Goal 4 to “foster and encourage economic development in the community” by creating opportunities for workforce housing.



RESOLUTION No. 2015-3187

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
A PROFESSIONAL SERVICES AGREEMENT WITH THE MID-
WILLAMETTE VALLEY COUNCIL OF GOVERNMENTS TO ADMINISTER
NEWBERG'S AFFORDABLE HOUSING TRUST FUND**

RECITALS:

1. In March 2012, the City Council adopted Ordinance No. 2012-2749 establishing the Newberg Affordable Housing Trust Fund (NAHTF), and in April 2012, the City Council adopted Resolution No. 2012-2988 establishing policies and procedures for administration of the NAHTF. The purpose of the NAHTF is to support the development, preservation, and rehabilitation of housing that is affordable to citizens of Newberg with incomes below the area median income.
2. Resolution No. 2012-2988 specified three distinct funding programs within the NAHTF: the competitive awards program, which can be either grants or loans; the time sensitive loan program; and the rental rehabilitation loan program. In October 2014, city staff contacted the Mid-Willamette Valley Council of Governments (COG) to discuss staffing assistance with the program, as the COG administers Newberg's economic development revolving loan fund and other similar programs.
3. The COG has put together a preliminary scope of work, attached as Exhibit "A" to this Resolution. Staff would like to proceed with contracting with the COG to administer the NAHTF, with specific details to be further worked out through discussions with COG staff.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council, acting as contract review board for the city, does hereby authorize the City Manager to enter into a Professional Services Agreement with the Mid-Willamette Valley Council of Governments for administration of the Newberg Affordable Housing Trust Fund, for a not to exceed amount of \$5000.00 through June 30, 2016.
2. Exhibit "A" is hereby attached and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 5, 2015

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of May, 2015.

Sue Ryan, City Recorder

ATTEST by the Mayor 7th day of May, 2015.

Bob Andrews, Mayor

Newberg Affordable Housing Trust Fund Program – Processing Roles & Responsibilities

TASK 1: DEVELOPMENT OF NEEDED PROCESS AND FORMS (1 month)

1. Draft additional application forms for clients (for all three programs- annual competitive awards for affordable housing, time sensitive program for leveraging of funds, and rental housing rehab program) using the template from previous cycles and revised based upon staff comments;
2. Draft revised RFQ documents/solicitations related to yearly award processes (set to advertise yearly on or near July 1st of every year, as funds permit);
3. Draft informational materials and brochures regarding the three (3) programs;
4. Submit draft forms to staff and Newberg Affordable Housing Commission (NAHC) for final review and approval;
5. Finalize application forms, loans documents, brochures

NTE amount of \$1,600 billed at hourly rate of \$80 (estimated at 20 hours)

TASK 2: FUND ADMINISTRATION (ongoing)

- 1. Staff all initial public inquiries regarding all loan programs and availability/guidelines**
 - Promote loan/grant programs
 - Respond to questions associated with the three (3) program purposes/uses/ approval criteria and loan brochure.
 - COG loan documenting servicing specialist.

Responsible party: CITY

- 2. Lead annual competitive awards RFQ, application process and advertisements.**

Responsible party: CITY

- 3. Application submissions and reviews**
 - CITY staff to conduct initial application submission reviews to determine if minimum eligibility criteria are met.
 - CITY staff to provide technical assistance on submitted application.
 - COG to staff Newberg Affordable Housing Commission (NAHC) meetings and review of applications and write staff reports to NAHC
 - COG to staff NAHC meetings and presentations by applicants, as requested by CITY
 - COG to assist NAHC in recommendations to Newberg City Council (for all 3 programs)

Responsible party: COG/CITY/Newberg Affordable Housing Commission (NAHC)

4. City Council decision

- City Council reviews the COG memo/ NAHC recommendation and makes the final decision on the application.
- COG staff to be available to attend City Council meetings, as requested

Responsible party: COG/City Council

5. COG drafts the loan documents

- If the City Council approves the loan, the COG prepares the draft loan documents for signature review.

Responsible party: COG

6. City reviews & comments on the draft loan documents

- The COG sends the draft loan documents to the City Planning & Building Director, or designee to circulate to the appropriate city staff for their review.
- City reviews and submits any comments or concerns about the documents to the COG (target city review time: 1 week).

Responsible party: City

7. COG prepares the final loan documents.

- COG incorporates any changes needed to the loan documents.

Responsible party: COG

8. Borrower signs documents.

- If the loan involves real estate transaction, borrower signs documents at the escrow company's office.

Responsible party: Borrower, COG

9. Loan is funded.

- COG sends documents to the city to sign.

Responsible party: City, COG

10. Loan servicing

- CITY staff conducts servicing of yearly loan payments (invoices and collection)
- COG staff conducts loan term compliance reviews and monitoring such as current insurance on property, property taxes current, etc. on an annual basis

Responsible party: City, COG

11. Loan closeout

Responsible Party: COG staff drafts all loan closeout documentation for CITY signatures and recording.

Compensation Details

1. **Technical assistance and loan collection assistance activities** when requested by **CITY** staff shall be compensated at the professional Loan Officer hourly rate of \$87.00 and the Loan Documentation and Servicing Specialist hourly rate of \$50.00 (which includes salary and all overhead costs including travel).
2. **Loan packaging and closing activities** shall be compensated at the professional Loan Officer hourly rate of \$87.00 and the Loan Documentation and Servicing Specialist hourly rate of \$50.00 (which includes salary and all overhead costs including travel)
3. **Loan servicing and reporting activities**, which include monitoring and verifying the provisions of all loan agreements, maintaining current documentation of insurance and tax payments, collecting and reviewing financial statements from each borrower on at least an annual basis, and preparing and annual loan program activity report to the **CITY**, **COG** shall be compensated at the professional Loan Officer hourly rate of \$87.00 and the Loan Documentation and Servicing Specialist hourly rate of \$50.00 (which includes salary and all overhead costs including travel)
4. As requested by the **CITY**, the **COG** Loan Program Manager shall be compensated at the hourly rate of \$100 (which include salary and all overhead costs including travel).

REQUEST FOR COUNCIL ACTION

Date of Council Meeting: May 4, 2015

Order ___ No.	Ordinance ___ No.	Resolution ___ No.	Motion ___	Information <u>XX</u>
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SUBJECT: Forward Looking Calendar, Committee Recruitment

Contact Person (Preparer) for this Item: Sue Ryan, City Recorder
Dept.:
File No.:

EXECUTIVE SUMMARY: These items are informational for the Council and the public.

FISCAL IMPACT: None.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): To keep the citizenry informed.

NEWBERG CITY COUNCIL 2015 FORWARD LOOKING CALENDAR

Monday, May 18, 2015

Updates on Public Works Standards Manual
Blaine Street Stormwater Design Contract
Chehalem Valley Chamber of Commerce quarterly report
Supplemental Budget Hearing and Adoption of Supplemental Budget
Adoption of RV and septage dumping fees
Adoption of Public Works Standards Manual
Adoption of support for National Heritage Area at Willamette Falls

Monday, June 1, 2015

Updates from Department Heads
Public Hearings on State Shared Revenue, Budget Adoption and Municipal Code Chapter 13 revisions
Adoption of allocation of State Revenue Shared funds and FY 2015-2016 budget
Adoption of creation of Transient Lodging Tax fund
Approval of Intergovernmental Agreement with Oregon Department of Transportation for Transportation Growth Management for revitalization of downtown
Approval of appointments to committees for Library Board and Student Commissioners

Monday, June 15, 2015

Adoption of Villa Road Contract

Monday, July 6, 2015

Public Hearing on Comprehensive Plan Amendment for Zoning at Martell Commons



City of Newberg

April 24, 2015

FOR IMMEDIATE RELEASE

SUBJECT: City Volunteers needed

The city of Newberg is seeking applications from citizens and local high school students to serve on a commission or committee. This is an opportunity to serve and be part of the decision-making team governing your community. Appointments are planned for June 1. Applications are available on the city's website at <https://www.newbergoregon.gov/citycouncil> or from the City Recorder's Office at city hall (414 E. 1st Street), cityrecorder@newbergoregon.gov and submitted via mail, email, or in person by **May 21st**. Questions ? Contact the city recorder at the email above or call (503) 537-1283.

Student commissioners must attend Newberg area high schools or homestudy programs.

Historic Preservation Commission – 1 opening for a student commissioner

The purpose of the HPC is to identify, recognize, and preserve significant properties related to the community's history, encourage the rehabilitation and ongoing viability of historic buildings and structures, strengthen public support for historic preservation efforts within the community, foster civic pride and encourage cultural heritage tourism. Student commissioners serve a one year term and are non-voting members of the commission. HPC meets on a quarterly basis.

Planning Commission – 1 opening for a student commissioner

The Planning Commission meets at 7 p.m. on the second Thursday of each month. Additional meetings, usually on the fourth Thursday of each month, are occasionally required. The Planning Commission hears requests for annexations, comprehensive plan changes, zone changes, conditional use permits, appeals, and other land use applications. Its duties are to hold hearings, make findings, and typically present its recommendation to the Newberg City Council. For some types of applications the Planning Commission makes the final decision.

Traffic Safety Commission - 1 opening for a student commissioner

The purpose of the Traffic Safety Commission is to promote traffic safety through investigation, study, and analysis of traffic patterns. The Commission makes decisions on the location of parking, crosswalks, safety zones, traffic lanes, truck routes, and all manner of traffic control devices within the community. In addition, they conduct and promote traffic safety programs. The student representative is a non-voting, student commissioner position. Student members will be active participants. Experience may also be used as a senior project or included as volunteer activity on a college application. Student commissioners serve a one year term and are non-voting members of the commission.

Library Board - 2 openings

The Library Board has two openings this spring. One requires in-city residency and the other position may be filled by any resident of the Chehalem Valley. Board members are appointed by the City of Newberg Mayor and confirmed by the Council each spring with four-year terms starting in July. The Advisory Board is made of up of five citizens, which includes four city residents and one resident from the surrounding area. Their regular monthly meeting is held on the 3rd Thursday of each month at 7:00 p.m. at the Library. The board makes policy for the library and provides citizen input on library operations.