



CITY COUNCIL AGENDA
SEPTEMBER 8, 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. APPOINTMENTS

1. Appointment of Patrick Johnson to Planning Commission Page 1

V. PRESENTATIONS

1. Presentation on Springs Divestiture by Public Works Director Jay Harris Pages 2-19

VI. CITY MANAGER'S REPORT

VII. 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)

VIII. CONSENT CALENDAR

1. Minutes for July 23 Special Session and August 17 Regular Session Pages 20-26
2. Year End Tourism Report for Chehalem Valley Chamber of Commerce Pages 27-36
3. Resolution 2015-3223, A Resolution authorizing the City Manager Pro Tem to appoint recommended candidates to positions in multiple departments Pages 37-40
4. Resolution 2015-3214, A Resolution approving the replacement of the Library Roof by Columbia Roofing in the amount of \$69,249.00 Pages 41-50
5. Resolution 2015-3215, A Resolution authorizing the City Manager Pro Tem to approve the replacement of the City Hall Heating, Ventilating, and Air Conditioning (HVAC) control system by the City's HVAC contractor, Alliant Systems, in the amount of \$ 66,979.00 Pages 51-59

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.

CONSENT CALENDAR, CONTINUED

- | | | |
|----|--|-------------|
| 6. | Resolution 2015-3224, A Resolution authorizing the acquisition of certain real property for the installation of sidewalk along the property at Tax Lot 3217 CD 05300 | Pages 60-62 |
|----|--|-------------|

IX. PUBLIC HEARING

- | | | |
|----|--|---------------|
| 1. | Ordinance 2015-2782, An Ordinance amending the Newberg Development Code regarding Temporary and Portable Signs | Pages 63-153 |
| 2. | Ordinance 2015-2784, An Ordinance amending Chapter 13 of the Newberg Municipal Code to reference Utility Master Plans and require permits for connection | Pages 154-257 |

X. NEW BUSINESS

- | | | |
|----|---|---------------|
| 1. | Resolution 2015-3222, A Resolution supporting an application to the Department of Land Conservation and Development for a Technical Assistance Grant for planning project assistance. | Pages 258-259 |
| 2. | Resolution 2015-3226, A Resolution appointing Stephen A. Rhodes as City Manager Pro Tem | Pages 260-261 |

XI. COUNCIL BUSINESS

Pages 262-263

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: September 8, 2015

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

SUBJECT: Appoint Patrick Johnson to the City of Newberg Planning Commission.

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

RECOMMENDATION:

To consent to the Mayor's appointment of Patrick Johnson to the Planning Commission to fill a vacant position with a term expiring December 31, 2016.

EXECUTIVE SUMMARY:

The Newberg Planning Commission is an eight member committee with one position designated as a non-voting student commissioner position. There is one full-time commissioner position open with the resignation of Planning Commissioner Art Smith, effective August 31, 2015.

Patrick Johnson has served as a member of the City's Budget Committee since 2012. He is interested in serving on the Planning Commission to be more involved with city government. He has prior experience as a reporter in covering land use including the Urban/Rural reserve process through Metro, and planning in Woodburn, Canby, Wilsonville, and Beaverton. He feels that planning is one of the first places where livability can be impacted, and wants to help Newberg grow while keeping its small town charm.

Mr. Johnson has seen how several other communities have handled growth, urban growth boundaries, density debates and transportation issues. He knows the basics of how land use works and would be ready to serve with some training. He is familiar with quasi-judicial hearings as well as LUBA and basing decisions based on code.

His experience with appointed or elected offices including serving on the Canby City Council, Canby Urban Renewal Budget Committee, Newberg Budget Committee and Clackamas County Economic Development Commission. He is a graduate of Newberg High School and George Fox University.

FISCAL IMPACT:

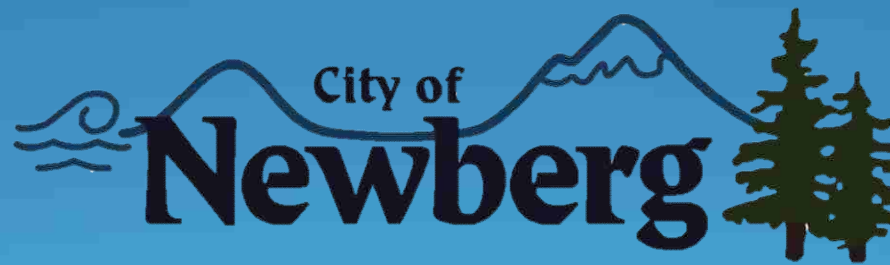
None.

STRATEGIC ASSESSMENT:

The Newberg Planning Commission serves a very important role in the betterment of our community and downtown making our City government viable and a great place to grow.

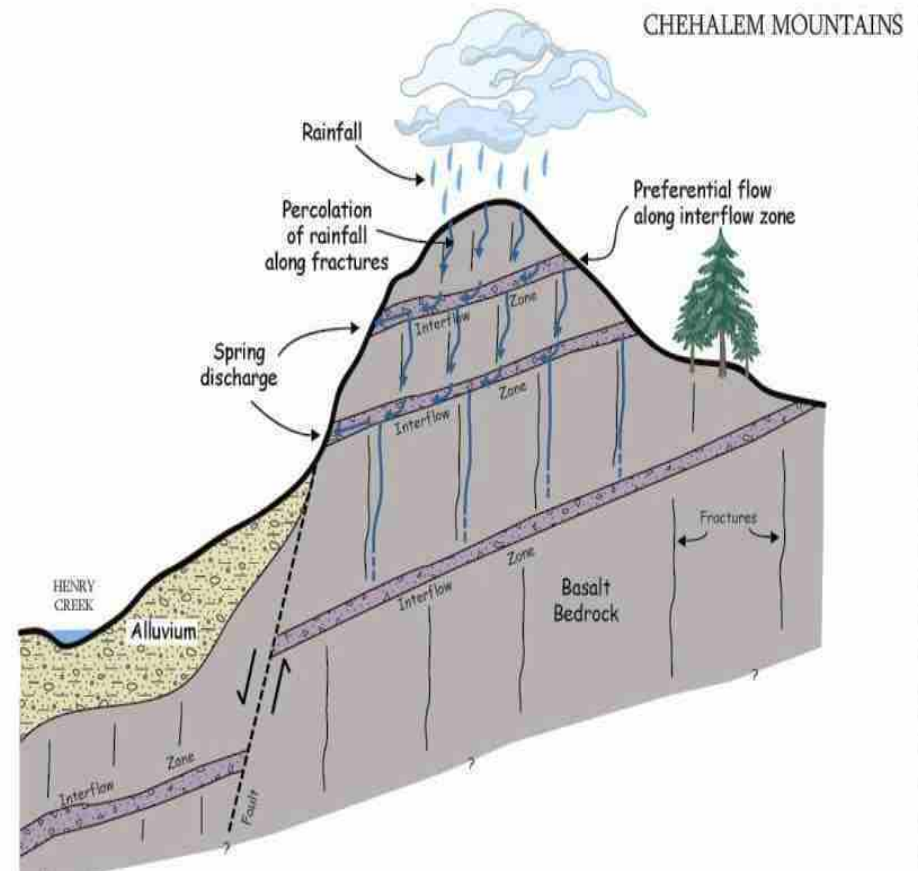
Springs Water Systems

September 8, 2015



ITEMS OF DISCUSSION:

- System History
- Regulatory Changes and Spring Upgrades
- Current Operations
- Divestiture Discussion
- Conveyance Agreement Summary
- Considerations
- Next Steps
- Questions



Conceptual Springs Flow Diagram

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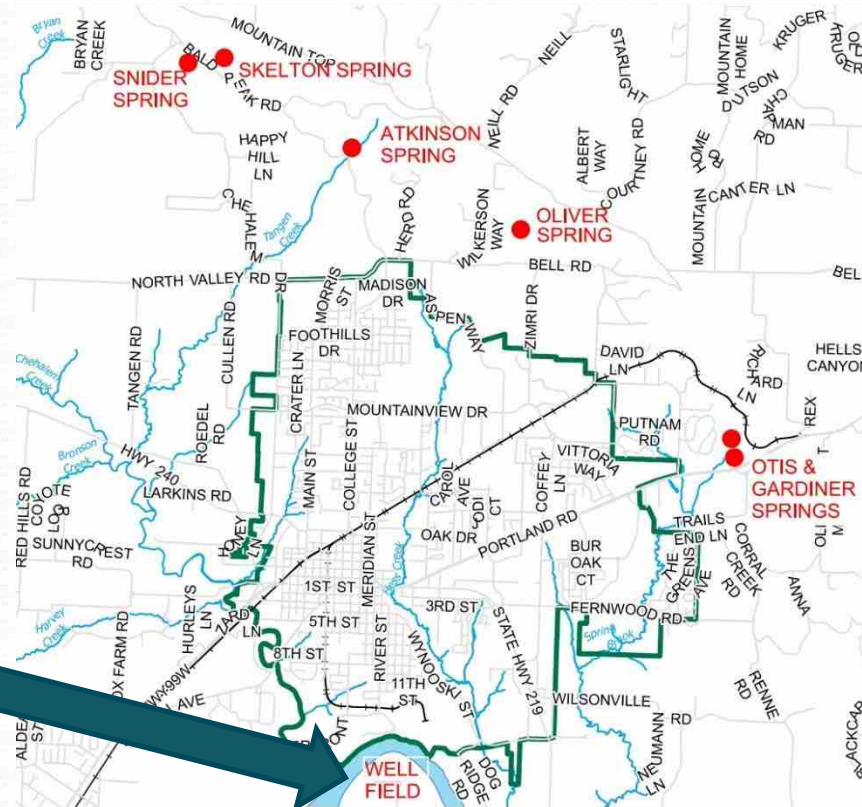
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HISTORY:

As demand increased wells were drilled south of the city.
By 2008 only 5.5% of the water supply came from the Springs.

In 2009 all of the springs were disconnected from the City water supply because of contamination during high turbidity events.

Today all water provided within city limits is supplied from the well field.



HISTORY:

Oliver Spring



- 24.1 Acres (City plans to retain 4 Acres)
- Water right established 1926, exclusive rights to the spring (no set volume).
- 22 Users
- Currently collecting 22.5 gallons per minute
- Potential maximum 40 gallons per minute



HISTORY:

Atkinson Spring



- 9.7 Acres
- Water right established 1925 of 898 gpm
- Currently collecting 0 gpm
- Potential maximum 75 gpm
- Atkinson Spring currently has no user connections



HISTORY:

Snider



- 39.8 Acres
- Water right established 1905 of 224 gpm
- Currently collecting 30.7 gpm
- Potential maximum 70 gpm



Skelton



- 17.7 Acres
- Water right established 1919 of 898 gpm
- Currently collecting 22.3 gpm
- Potential maximum 25 gpm
- 50 users (Snider/Skelton combined)

Regulation Changes:

1985 Federal Clean Water Act:

The City was required to disinfect the spring water sources with chlorine and to monitor for turbidity.

- Monitoring resulted in posting “boil water notices” periodically for spring customers depending on conditions and field sample testing.
- Turbidity contamination issues led to the decision to disconnect the spring system from the main water system in 2009. This eliminated any disinfection issues from affecting the entire water system.

Turbidity - is caused by soil particles and air suspended in the liquid.

Storm water runoff and ground disturbances can increase turbidity.

Turbidity interferes with water disinfection and can increase likelihood of bacteria in a water line.

Boil water notices recommend that springs customers take disinfection precautions.

Regulation Changes:

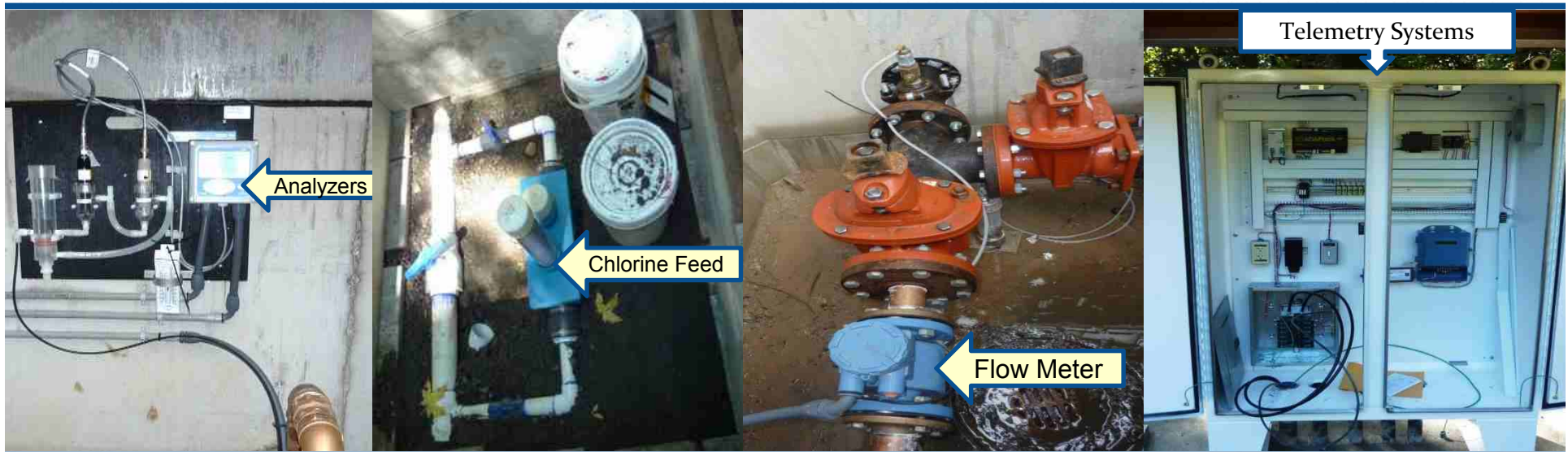
2008 State of Oregon Drinking Water Program (DWP):

The springs became subject to the DWP rules that required upgrades to the spring boxes, Chlorine Treatment (CT) and monitoring systems at each spring location including:

- New metering
- New vaults
- Upsize existing pipe
- Install remote monitoring telemetry

The cost of the upgrade project was split equally between the City and Springs Customers (*Council Res No. 2008-2776*)

Design:	\$ 202,413
Construction:	\$ 444,869
Staff Time:	\$ 48,086
Other/misc.:	\$ 12,511
(easement acquisition, fees, etc.)	
Total:	\$ 707,879



Regulation Changes:

2012 Oregon Health Authority Drinking Water requirement:

To meet OHA requirements, Newberg began weekly monitoring for Lead and Copper Corrosion. Upgrades were made to Oliver and Snider Springs to provide necessary sampling and dosing systems.



Regulation Changes:

- A *Soda Ash Dosing System* was installed at Snider and Oliver springs to control the PH levels which helps prevent corrosion of household lead and copper.



Completed Upgrades to date:
Telemetry, Engineering, Storage
shed, electrical work, pipe, tote
heaters, pumps and 2 pH probes.
\$15,000
(Funded through yearly O&M budgets)



Further upgrades should be considered in the near future to improve system reliability such as a hypochlorite (liquid chlorine) injection system and additional chemical storage structures.

SPRINGS OPERATIONS & MAINTENANCE

Routine Maintenance:

City staff visit each spring at least 3x per week

- restock chlorinators & soda ash containers
- calibrate analyzers & adjust chemical feed rates
- site check security
- manual discharge meters
- collect samples for in house lab testing
 - Temperature & Turbidity
 - Conductivity & Alkalinity
 - PH levels & Chlorine residual
- maintenance of de-chlorination systems
- monthly collection of water meter readings



Additional maintenance tasks:

- altitude valve maintenance
- backflow device maintenance
- filter screen replacements
- trail head and vegetation control
- root & spring box cleaning
- pest abatement
- repair replace meters, pipe network

Administrative tasks:

- monthly billing of meter readings
- processing of utility and supply invoices
- monthly reports to Drinking Water Program
- annual reports to EPA
- annual report mailed to each customer
- annual reports to Oregon Cross Connection and Water Resources Programs with test & user data

Divestiture Discussion:

On September 2, 2008 the Council adopted Resolution #2008-2776:

- Created a separate Spring customer billing classification
 - *Users of the spring system are all located outside City limits and are exclusively served by the springs system.*
- Mandated full cost recovery of O&M and capital costs from spring users
 - *The 2013 Citizens Rate Review Committee reviewed and recommended rate increases for 2015 and 2016 for the springs user group to meet the projected increase to the yearly operation and maintenance costs.*
- The Resolution declared “Council is open to divesting itself of ownership and operation of the springs system, and that the City in good faith, consider any proposals for the transfer and ownership of the springs system from the Four Springs Water Association or any responsible organization”.

Divestiture Discussion:

For approximately the last 18 months, City staff has been in discussion with representatives of the springs user group to form an agreement to transfer ownership of the system. Last summer the City and the springs user group signed a letter of intent for the two parties to begin negotiations to discuss transfer of the system. Last winter, the springs user group formed the non-profit **Chehalem Springs Water Association**. This group is ready to assume management of the springs systems that serves the existing 72 water customers. The Association is proposing to contract with Hiland Water Corporation in the operation and maintenance of the system. Hiland Water is based in Newberg and currently operates multiple water systems around the State. At the Council meeting on 10/7/14 Hiland Water provided information regarding their experience operating small water systems; Council then later met with Staff in Executive Session to discuss the potential transfer of the system to the springs user group.

System Information: (All Springs are separated from the City well field water system)

	Property	Max GPM	Current Use
Oliver	20.1 acres	40	22.5
Atkinson	9.7 acres	75	0
Snider	39.8 acres	70	30.7
Skelton	17.7 acres	25	22.3

Conveyance Agreement Summary:

Chehalem Springs Water Assoc. Receives:

- Assets and liabilities
- Property and water rights
- Access and waterline easements
- Treatment & transmission facilities
- Customer accounts effective date of transfer
- Operating manuals and SOP instructions
- Electronic records of reports and data
- 1 year limited operation support/guidance from the City
- A two year line of credit from the City as a temporary operations and maintenance reserve fund.

City of Newberg Retains:

- Customer accounts prior to date of transfer
- All SCADA and proprietary equipment
- Access to water in a emergency event
- Customers located in the City Urban Growth Boundary and Urban Reserve Areas will connect to the City water system upon annexation into the City of Newberg.
- Approximately 4 acres of the Oliver Springs property to be used as a potential City of Newberg zone 4 pressure reservoir site.

Considerations:

Divestiture Benefits to City

- \$120,000 annual savings in operation and maintenance costs, which will increase as the system ages.
- Not affected by future regulations that may add additional system treatment, testing, and management.
- No future infrastructure upgrades.
- Reduced regulatory renewal fees.
- Reduction of risk that is associated with operating a small rural water supply system with multiple sources & treatment systems.

Divestiture Impact to City

- Transfer of Property, 83.30 net acres.
- Transfer of 4 Water Rights. Note that the actual spring production/flow is well less than the allocated water rights.
- Reduced revenue/billings with the loss of 72 customers.

Divestiture Benefits to User Group

- Rate stabilization, user group expects to operate the system at a the current 2015 City water rates. City is to increase the water rate in January of 2016 as recommended by the CRRC.
- Potential to add additional customers to increase revenue and share costs.
- Reduced regulations associated with the operation of a small water system, which in turn may reduce overall costs.

Next Steps:

Staff is preparing a Resolution for Council consideration at the September 22 meeting that will authorize the City Manager and City Attorney to execute the final documents needed to complete the transfer ownership of the springs water system. The Resolution will include a draft copy of the agreement that is currently being drafted between the City and the Chehalem Springs Water Association.



Oliver Spring Aerial Photograph

Thank you



For more information, please contact:

James (Jay) Harris

Public Works Director

City of Newberg

503-537-1211

jay.harris@newbergoregon.gov

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 8, 2015

Order ____ No.	Ordinance ____ No.	Resolution ____ No.	Motion ____	Information XX
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SUBJECT: Minutes

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

The minutes from the July 23, 2015 and August 17, 2015 Council Minutes are attached for your approval.

**NEWBERG CITY COUNCIL MINUTES
SPECIAL SESSION
JULY 23, 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 Lesley Woodruff	Scott Essin Denise Bacon	Stephen McKinney
Staff Present:	Truman Stone, City Attorney & City Manager Pro Tem Sue Ryan, City Recorder Doug Rux, Community Development Director Maya Benham, Paralegal Matt Zook, Finance Director Chris Bolek, Interim Police Chief	Jay Harris, Public Works Director Les Hallman, Fire Chief Dave Brooks, Information Technology Director	

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was performed.

NEW BUSINESS:

Resolution 2015-3216: City Manager Pro Tem Truman Stone said he was speaking as the City Attorney. He said it became clear to him since Tuesday that it was impossible for one person to fill both positions due to the inherent conflicts between the two roles. He said it was not wise for one person to be giving the city advice and the same person executing that advice. He said his recommendation was for Council to appoint Terrence D. Mahr as City Manager Pro Tem.

Discussion: Mayor Andrews said he would be voting for it. He said he appreciated the concerns the City Attorney had brought to their attention and appreciated both CA Stone and Terry Mahr filling in.

MOTION: Bacon/McKinney moved to adopt Resolution 2015-3216, A Resolution Repealing Resolution 2014-3159 and appointing Terrence D. Mahr as City Manager Pro Tem. Motion carried (5 Yes/ 0 No/2 Absent [Corey/Rourke]).

COUNCIL BUSINESS:

Mayor Andrews said the coronation for Newberg Old Fashioned Festival was at 8:00 p.m. this evening.

Terry Mahr said he was glad to come back to the City and work with the City employees and officials. He said it was an honor to be asked to come back to the City and fill in.

There was a discussion about when Mr. Mahr would begin work. He said he would be in the next day, Friday, July 24.

ADJOURNMENT: The meeting was adjourned at 7:09 p.m.

ADOPTED by the Newberg City Council this 8th day of September, 2015.

Sue Ryan, City Recorder

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

Bob Andrews, Mayor

**NEWBERG CITY COUNCIL MINUTES
REGULAR SESSION
AUGUST 17, 2015, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)**

The work session was held at 5:00 p.m. preceding the meeting. Present were Mayor Bob Andrews, Councilors Lesley Woodruff, Stephen McKinney, Scott Essin, and Denise Bacon. Also present were City Manager Pro Tem Terry Mahr, City Attorney Truman Stone, Public Affairs Officer Brittney Jeffries, and City Recorder Sue Ryan.

REVIEW OF COUNCIL AGENDA:

Councilor Rourke said Page 8-9 of the July 6 minutes needed to state the motion was made by Essin/McKinney. Councilor Essin wanted to pull Resolution 2015-3208 from the consent calendar. It would be discussed at the next Council meeting on September 8. City Attorney Truman Stone made edits to the July 20 minutes for the 7:00 a.m. Emergency Meeting on Page 11, it was the Mayor and Councilor Bacon who called the Emergency Meeting. He brought up an additional issue with the July 23 minutes and said he would consult with the City Recorder and the minutes could be brought back at a later date.

EXECUTIVE SESSION

The Council entered into Executive Session pursuant to ORS 192.660 2 (h) Consultation with Legal Counsel to discuss proposed separation agreement with City Manager Jacque Betz at 5:10 p.m. Council exited Executive Session at 6:25 p.m.

Staff present included City Manager Pro Tem Terry Mahr, City Attorney Truman Stone and contract Labor Lawyer Todd Lyons.

CALL MEETING TO ORDER

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

ROLL CALL

Members Present:	Mayor Bob Andrews Lesley Woodruff Tony Rourke	Scott Essin Denise Bacon	Stephen McKinney Mike Corey
Staff Present:	Terry Mahr, City Manager Pro Tem Sue Ryan, City Recorder Doug Rux, Community Development Director Brittney Jeffries, Public Affairs Officer Steve Olson, Associate Planner Matt Zook, Finance Director Nancy McDonald, Interim Human Resources Director Jessica Pelz, Associate Planner		
	Truman Stone, City Attorney Kaaren Hofmann, City Engineer		

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was performed.

Mayor Andrews explained the amended agenda and the items that would be covered that night.

PRESENTATIONS:

Mayor Andrews recognized Abby Bingham of Newberg who won the state essay competition for "If I Were Mayor" through the Oregon Mayor's Association. She attended Mountain View Middle School.

SPECIAL COUNCIL BUSINESS

Resolution 2015-3221: Mayor Andrews said the Council met in Executive Session to discuss the issues and possible litigation concerning City Manager Betz. The resolution would approve a separation agreement between the City and CM Betz. He asked for public comment on the resolution before the vote.

Darlyn Adams, Newberg resident, thought Chief Casey was treated wrongly. She thought there should be a thorough investigation of character when looking for a new City Manager. It was the right thing to let CM Betz go.

Michael Gunn, Newberg resident, said the Council had dropped the ball on this. The City had been on defense since the start and the Council acted like they did not want to have to deal with the issue. He did not think Council knew exactly what happened in this situation. They had not forced Ms. Betz to come before Council and confront her with the allegations. They did not have the facts to pay her \$100,000 to make her go away. He thought they had cause to terminate her. He submitted questions on July 20 to the Council and he had yet to receive an answer. He was upset at the lack of communication. He asked if the \$35,000 for release of all claims was coming from the insurance company or from the City. CM Pro Tem Mahr stated the insurance company was paying \$30,000 and the City was paying the rest. Mr. Gunn said they were paying a lot of money to Ms. Betz and he didn't think the City did a proper investigation to see how good of a case they had against her.

MOTION: Rourke/Bacon moved to adopt Resolution 2015-3221, A Resolution authorizing a proposed separation agreement between the City and City Manager Betz with a small correction to the second recital from criminal wrongdoing to criminal wrongdoing. Motion carried (7 Yes/0 No).

PRESENTATIONS:

Finance Director Matt Zook gave a report on the bond sale. This was refinancing five Business Oregon loans and one City Hall loan. Repayment of the debt over the next 12 years would have been about \$13.7 million dollars, but by reissuing one bond to replace the six different debt instruments it had been reduced to \$12.6 million dollars. The interest rate they received was 2.25%. They were able to get into the market at the right time to get the lower interest rate. The goal was to save money by deferring the savings to the end of the bonds. The City was also able to obtain a two notch increase above the last rating the City received, which was back in 1998 when the Fire Bonds were done.

Councilor Essin asked about State of Oregon bonds which were not included. FD Zook said there was one debt instrument that was not eligible for pre-payment and additional State of Oregon projects they were borrowing on right now. There were a few other debt issuances that remained with the State.

CITY MANAGER PRO TEM'S REPORT:

CMPT Mahr had visited all of the City departments and everything was functioning well. One of the big issues was several fires in the area and fire resources, which were very stretched. City Recorder Sue Ryan had been doing superior work, especially in regard to public records requests. Interim Human Resources Director Nancy McDonald had also been helping him as well as City Attorney Truman Stone. He was looking forward to continue to work with Council.

PUBLIC COMMENTS:

Merle Smith, Newberg resident, discussed the intersection on Wilsonville Road as a result of the terminus from the new Newberg-Dundee Bypass. He asked to distribute a summary of the issue to the Council.

MOTION: Bacon/McKinney moved to accept the document. Motion carried (7 Yes/ 0 No).

Mr. Smith said the Council would be asked to make a decision on the planning process for the intersection. He wanted to help provide some education on the issue and further information if needed. There were a number of jurisdictions involved, including Yamhill County, Clackamas County, City of Wilsonville, West Linn School District, and ODOT had helped design the plan they were proposing. The vote would be an amendment to the Transportation Service Plan and he urged them to support the no-through option and learn as much about the issue as they could. This was a safety issue and a high priority.

John Freeman, representing the Ladd Hill Neighborhood Association as well as Yamhill County, Clackamas County, City of Wilsonville, and West Linn School District, said they had always supported construction of the bypass. They had hired a traffic engineer who discovered ODOT did not do the NEPA required modeling regarding Wilsonville Road with the design they put forth. When they brought that to ODOT's attention in January 2015, they started talking about alternative designs. ODOT came back with a revised design, which the association approved, and they took it to the State traffic highway engineer who also approved it. It was a no-through design which meant people traveling west on Wilsonville Road and east on the bypass would not be able to go straight across onto the other road, they were forced to turn either left or right. By doing so it would discourage a huge increase of traffic on Wilsonville Road. It would still be in the existing right-of-way that had been acquired and there would be no change to the schedule or budget. They had a complaint ready to file in federal court against ODOT and the Federal Highway Administration should they continue with the unsafe design. He asked that the Council give this due consideration.

Councilor Rourke asked for a summary of the no-through design element. Mr. Freeman explained how it would be designed to force traffic to turn right or left and not go straight through. The new design supported the old design as the original plan was to route the traffic up Springbrook Road with improvements and those improvements were still in the plan. This proposal was to change the traffic control to reinforce the original plan.

CONSENT CALENDAR:

MOTION: Rourke/Bacon moved to adopt the Consent Calendar, including Minutes for July 6, 2015 as amended, July 20 Emergency Session and July 20 Regular Session, Resolution 2015-3191, A Resolution to adopt the revised Public Works Design and Standards, Resolution 2015-3210, A Resolution to authorize the City Manager Pro Tem to enter into a Professional Services Agreement with Murray Smith and Associates to complete the update to the Water Master Plan in the amount of \$296,343.00, Resolution 2015-3211, A Resolution amending policies and procedures for administration of the City of Newberg's Affordable Housing Trust Fund, Resolution 2015-3219, A Resolution to authorize the City Manager Pro Tem to enter into a small Enterprise License Agreement, Inc. (ESRI) in the amount of \$75,000, Resolution 2015-3220, A Resolution authorizing the City Manager Pro Tem to appoint recommended candidates to positions in multiple departments, Establishment of Newberg Downtown Improvement Plan Advisory Committee, and acceptance of Affordable Housing Commission NOFA & Noticing. Motion carried (7 Yes/ 0 No).

PUBLIC HEARING:

Ordinance 2015-2785, Amend Ordinance 2012-2749 to correct language for Housing Trust Fund:

Mayor Andrews opened the public hearing. He called for any abstentions, conflicts of interest, or objections to jurisdiction. There were none.

Community Development Director Doug Rux presented the staff report. This ordinance amended the language for the Housing Trust Fund. The fund was established in March 2012 and in April 2012 the policies and procedures to administer the fund were passed. Modifications had been brought to the Council in June 2015 and one of the changes was 100% of median area income was changed to 80%. An oversight occurred where staff found that the original ordinance needed to be modified to reflect the changes in the percentage.

There was no public testimony.

Mayor Andrews closed the public hearing.

Staff recommended passage of the ordinance.

City Attorney Truman Stone read the Ordinance by title only.

MOTION: Rourke/ Woodruff moved to waive the second reading and adopt Ordinance 2015-2785, to Amend Ordinance 2013-2785, to correct language for the Housing Trust Fund. Motion carried (7 Yes/ 0 No).

NEW BUSINESS:

Resolution 2015-3217:

Associate Planner Jessica Pelz said that this resolution would amend the Comprehensive Plan and adopt the population forecast the City was required to have by Administrative Rules. The Administrative Rules also allowed a safe harbor employment forecast. Staff recommended approval of the resolution. This would first go to the Planning Commission, then back to the Council.

There was a discussion on the coordinated population forecasts and how they would be done throughout the state.

MOTION: Woodruff/McKinney moved to approve Resolution 2015-3217, A resolution initiating a Comprehensive Plan Amendment to adopt the Yamhill County Coordinated Population forecast and associated employment forecast. Motion carried (7 Yes/ 0 No).

Resolution 2015-3212:

Associate Planner Steve Olson said there was an application with the County that was outside the City limits and Urban Growth Boundary, but in the urban reserve. It was for a Conditional Use Permit to take an existing house and build a five bedroom addition for a Bed and Breakfast on Bell Road. The owner would live in the main house and manage the B & B. In 2001 this property was divided into three parcels and at that time based on the City's and County's agreement they came up with a future development plan which showed how urban level development could occur in the future and that it would not preclude future urbanization. Access would be off of Bell Road and they were planning to add a gravel parking area. Both the new addition and existing building met the setback requirements. Bell Road was in the current TSP as eventually being improved. Based on the site plan and description, the application was limited in scope and would not prohibit future urban development. Staff recommended approval of the resolution.

MOTION: Corey/Rourke moved to approve Resolution 2015-3212, A Resolution recommending that Yamhill County approve the proposed Conditional Use Permit for a bed & breakfast at 28900 NE Bell Road, Yamhill County Tax Lot 3209-900. Motion carried (7 Yes/ 0 No).

Resolution 2015-3209:

AP Olson said this had come before Council in Work Session on July 20. He explained street seats were temporary platforms that took up a parking space to provide additional outdoor seating for a business. This would be a two year pilot program and was limited to no more than six on street parking spaces. He explained what the City and the applicant would be responsible for and discussed the design guidelines. Staff recommended approval of the resolution.

MOTION: Bacon/Rourke moved to approve Resolution 2015-3209, A Resolution approving a Street Seat Pilot Program in the Downtown C-3 Zone. Motion carried (7 Yes/ 0 No).

EXECUTIVE SESSION:

The Council entered into Executive Session pursuant to ORS 192.660 2 (d) Labor Negotiator Consultations at 8:16 p.m. Staff Present included City Manager Pro Tem Terry Mahr, City Attorney Truman Stone and Interim Human Resources Director Nancy McDonald. Council exited executive session at 8:40 p.m.

NEW BUSINESS:

MOTION: McKinney/Corey moved to approve Resolution 2015-3205, A Resolution approving the Collective Bargaining Agreement between the City and the Newberg-Dundee Public Safety Association; and authorizing the City Manager Pro Tem to execute the agreement. Motion carried (7 Yes/ 0 No).

COUNCIL BUSINESS:

Mayor Andrews announced on Saturday, October 3, the Council would have an initial strategy session with Joseph Bailey. He recommended the Council continue on in this process. There was Council consensus to continue.

Mayor Andrews brought up the issue of the need for an interim City Manager. He wanted to have a Council subcommittee for selection of the position. He asked for Councilors Corey, Woodruff and McKinney to sit on the subcommittee with himself and Council President Bacon as nonvoting members. He said they would be contacting City Manager Pro Tem Terry Mahr about starting the process.

Councilor Rourke brought up the issue of Interim HR Director Nancy McDonald as there were limited amount of hours they could use her services. City Attorney Truman Stone said Ms. McDonald's hours would run out in the beginning of October. The process needed to start immediately to hire an HR Director.

Ms. McDonald explained her schedule. If she reduced the number of hours she worked, she could stretch it until the end of the year. She was willing to work from January to May of next year as well. She thought it would be good to wait to hire a new HR Director until a City Manager was hired as the two positions worked closely together. Time would also heal some of the issues. She could watch her hours diligently, focusing on priority projects, and put together a recruitment strategy for the HR Director position and go through the recruitment process. She thought the new City Manager should have some input on the hiring.

Mayor Andrews thought the priority should be putting together the recruitment for the HR Director position.

ADJOURNMENT: The meeting was adjourned at 8:52 p.m.

ADOPTED by the Newberg City Council this 17th day of August, 2015.

Sue Ryan, City Recorder

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

Bob Andrews, Mayor

THE CHEHALEM VALLEY VISITOR CENTER

2014-15 Fourth Quarter & Tourism Report

2014-15 FOURTH QUARTER STATS

Web Visits: 14,754

Visitor Center Traffic: 4,171



The rolling hills surrounding Newberg and the Chehalem Valley are home to more than one hundred wineries, an award-winning luxury resort, delightful B &B's, and world-renowned four-star restaurants.

In tasting rooms downtown, and nestled in the hillsides, you'll find 90+ point Pinot Noir, Chardonnay, Sparkling, and more. Enjoy winery tours and dinners alongside breathtaking views of Mount Hood and the Pacific Coast Range. Dining in the valley is an art form, whether a private wine dinner, banquet, or restaurant meal. With farm-to-table cuisine, the food is fresh and inspired chefs prepare innovative dishes made especially for wine pairing.

Farms, hazelnut trees, and orchards complete the vineyard landscape. Along with produce roadside stands, you'll find farmers' markets, fine art galleries, a world-class spa, over twenty parks, and charming neighborhoods filled with historic homes, including the boyhood home of Herbert Hoover.



The Chehalem Valley Chamber of Commerce (CVCC)—through a marketing services agreement with The City of Newberg—works in partnership with many community stakeholders to grow tourism in the Newberg Community. Together we deliver programs and activities that enhance the visitor experience, encourage local overnight stays and tourism, and improve the quality of life for residents.

An effective destination development and marketing program benefits the quality of life for residents while attracting visitors and enhancing tourism. A healthy return on transient room tax investment leverages services, amenities, and activities that appeal to visitors and residents alike. Spending by visitors in local communities results in a positive economic impact. The standard and quantifiable measurement of the economic benefit of tourism is to track visitor spending. This is possible with the *Dean Runyon Economic Impact Report* prepared annually for Travel Oregon (The state tourism office). The CVCC measures success by tracking local transient room tax collections—the result of attracting overnight visitors.

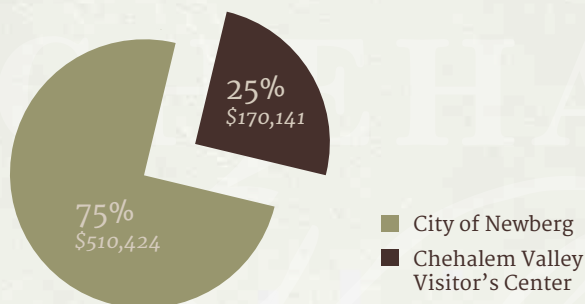
Yamhill County benefited from over 98.6 Million Dollars in Visitor Spending in 2014. (Source: Dean Runyon and Associates)

It is estimated that annual visitor spending in Newberg exceeds 23 Million Dollars and makes a significant contribution to the health of the local economy.

THE CHEHALEM VALLEY VISITOR CENTER

2014-15 Fourth Quarter & Tourism Report

Distribution of Transient Occupancy Tax (TOT) Collected
2014-15 Total: \$680,565 (33% increase over fiscal year 2013-14)



Newberg Transient Occupancy Tax History:

2010-2011	\$352,487
2011-2012	\$415,917
2012-2013	\$472,086
2013-2014	\$511,843
2014-2015	\$680,565

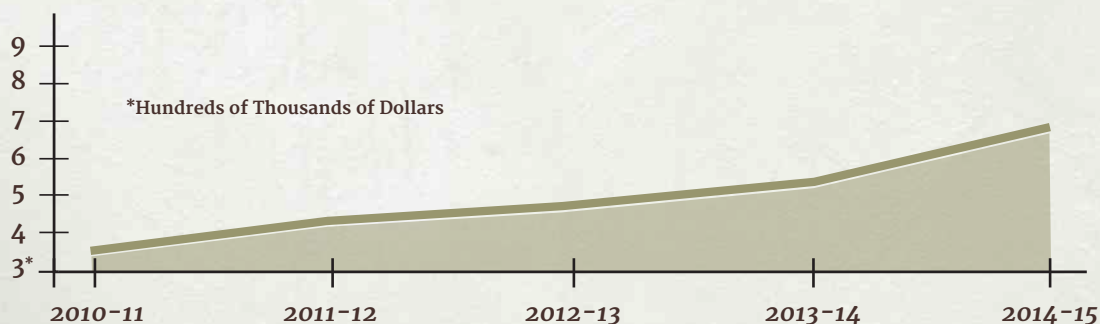
2014-2015 was a successful year for CVCC Visitor Center Services on many levels:

- Transient Lodging taxes collected in Newberg increased by 33% over last year*

- In 2014-15, the Visitor Center experienced unprecedented walk-in traffic with a 61% increase over last year
- The Oregon Wine Education Center (a project inside of the CVCC Visitor Center) launched a number of new classes serving visitors and the wine industry. The CVCC has applied for a \$10,000 Oregon Wine License Plate grant to expand and market the curriculum at the Oregon Wine Education Center.
- CVCC's strong relationship with Travel Oregon has contributed to the significant number of international media tours that are traveling through Newberg.
- The CVCC developed a professional customer service training program taught by experts in the field. The program was offered to all Newberg employers at low-cost in an effort to influence a positive customer/tourist service experience in Newberg that will encourage return visitors.

*A portion of increase attributed to overall increase in room tax %

Total Transient Occupancy Tax (TOT) Collected Over Time



THE CHEHALEM VALLEY VISITOR CENTER

2014-15 Fourth Quarter & Tourism Report

Each year, as part of our agreement with the City of Newberg, the CVCC prepares a Destination Marketing plan that is used as a business plan to guide our marketing activities for the coming year.

The following is a recap of how we performed against that plan:

Contract Performance Report:

July 1, 2015

Increase Visitor Spending with an Effective Marketing Mix	
Publish 9,000 Community Guides	Complete
Publish Community Map(s)	Complete
Publish Wine Education Brochure	Complete
Re-design of tourism guide (19,000) published	Complete
Developed Visitor Itineraries for the website and print	Complete
Promote Camellia Festival, Tunes on Tuesday, Brews & BBQ and the Old Fashioned Festival with paid listings in the Oregon Festival and Events guide published by Travel Oregon	Complete
Paid ad in Travel Oregon Official Tourism Guide	Complete
Paid ad in Travel Portland Official Tourism Guide	Complete
Paid ad in semi-monthly publication of NW Travel Magazine	Complete
Presenting Sponsor for “Rain or Shine” campaign to bring visitors to the area during shoulder season. (January–April)	Complete
Presenting sponsor for Camellia Festival	Complete
Led “America’s Best Communities” grant application process, resulting in being named one of 50 quarterfinalists in the USA. Newberg is competing for the ultimate prize of \$3,000,000, an amount that may be used for a community revitalization project that will have a positive impact on resident quality of life while attracting tourism. Advanced to second round of competition.	In Progress
First Friday sponsor for “The Trolley”: Provided funds for Downtown Newberg First Friday signage—feather flags, banners, yard signs, etc.	Complete
Marketing Sponsor for Newberg Downtown Wineries progressive picnic	Complete

THE CHEHALEM VALLEY VISITOR CENTER

2014-15 Fourth Quarter & Tourism Report

Re-design the Tourism Section of the CVCC Website	
This project is in process and will launch by the end of the Calendar year	12/31/15
Create “Things to Do” Consumer Marketing Piece	
A sheet with monthly updated and relevant “things to do” visitor information	Complete
Ensure CVCC Staff & Community Front-Line Staff Are Well-Trained	
Visitor Center training completed by all new CVCC staff	Complete
All CVCC staff is Q-Certified (Travel Oregon online Customer Service Training) within 90 days.	Complete
CVCC staff stays current with new/closed businesses and new products and services through weekly outbound calls to business and Ambassador reports.	Ongoing
CVCC staff receives ongoing outside training. (Customer Service, Governors Conference on Tourism, Western Association of Chamber Executives)	Ongoing
Provided first annual low-cost half-day Professional Customer Service training for the Greater Newberg Community	Ongoing
Implement Visitor Center Practices that Directly and Positively Impact Area Overnight Stays	
Phone/walk-in lodging inquiries are met with an offer of reservation assistance	Ongoing
Complimentary trip-planning services added to display advertising pieces	Complete
Increase Number of Visitors to the Visitor Center by 5%	
Results: Visitor Center traffic 2013-2014 = 9,717 Visitor Center traffic 2014-2015 = 15,696 A 61% Increase	Complete
Implemented Visitor Center Surveys to improve future marketing efforts.	Complete
Outbound calls to lodging partners to promote activities at the Oregon Wine Education Center	Ongoing

THE CHEHALEM VALLEY VISITOR CENTER

2014-15 Fourth Quarter & Tourism Report

Presented six new consumer training classes in the Oregon Wine Education Center	Complete
Created and launched the first Tasting Room Associates Class (TRAC) in the Oregon Wine Education Center	Complete
Travel Portland Visitor Center at Pioneer Courthouse square and through other tourism partners throughout the state (Measured by available inventory against what was printed)	Complete
Establish Travel Trade section on the website	In Process
Utilize “What New” Marketing piece for Travel Trade	Complete
Successfully recruited Oregon Truffle Festival to Newberg (2015)	Complete
Hosted and/or developed itineraries for over 35 travel writers 2014-2015	Complete
Hosted private Truffle Tour group of 12 for 3 days following the Oregon Truffle Festival	Complete
Instigated a county-wide tourism summit to bring together those entities engaging in tourism promotion in Yamhill County and encourage collaboration	Complete
Pitched and successfully recruited Allen Routt and the Painted Lady to represent Newberg at FEAST 2014	Complete
Pitched and successfully recruited the 2017 American Camellia Society Convention to Newberg	Complete

*The August 2015 **Wine Enthusiast** named Newberg, Oregon #3 in the “Top Five ‘Must-See’ Wine Destinations in the Nation”*

CVCC VISITOR CENTER STAFF PROVIDED
SUPPORTING CONTENT AND PHOTOGRAPHY

One of the most labor-intensive but important tasks associated with Tourism Marketing is working with the media and travel trade to coordinate “familiarization tours” or “FAMS”: procuring photography, scheduling interviews with local tourism stakeholders, and leading tours as requested by media and/or Travel Oregon. Unpaid media placements consistently deliver the highest value return on investment in the tourism industry.

Newberg would benefit from having a full-time person dedicated to Public Relations with the Media and Travel Trade as well as create ongoing local tourism content for our website, Willamette Valley Visitors Center Website and Travel Oregon’s website. CVCC planned to add that position in FY 2015-2016, however the capped contract will not support the additional position. The Chamber may need to adjust other marketing and advertising to accommodate a part-time person.

THE CHEHALEM VALLEY VISITOR CENTER

2014-15 Fourth Quarter & Tourism Report

Fourth Quarter Tourism PR Summary

April

- 3 Prepare presentation on "What's New" in Newberg and surrounding area for 200 attendees at the Visitor Information Center Conference on April 11 & April 12
- 6 Respond to last-minute call-out for photos for *SELF Magazine* for the **Fueled by Fine Wine Half Marathon**
Work on *FEAST* media tour stops in Newberg area September 20th
- 13 & 14 Attend Governor's Conference on Tourism
Attend Oregon Destination Marketing Organization Board Meeting
- 14 Respond to call-out from *punchdrink.com* on local visitor statistics
- 20 Approve Ad design for *Food & Travel Magazine* (In collaboration with *Willamette Valley Visitors Association*)
- 21 Respond to Travel Oregon call-out
Create local itinerary for photographer Andy Best
Coordinate lodging at **The Allison Inn & Spa** for *Australia Body & Soul WILD* sweepstakes winner and guest and write itinerary for their visit to Newberg on June 21st
- 29 Call-out from *NW Travel Magazine* for high resolution photo of **99W Drive-in** Newberg (Brian Francis did not have any photos of adequate resolution CVCC hired a professional to take the Drive-in pictures in time to make the June 2015 edition)
Respond to writer for *SELF Magazine* with Chef contact information at **JORY, The Painted Lady, and Joel Palmer House.**

May

- 4 Follow-up on itinerary and details for Food Bloggers trip to **The Allison Inn & Spa**
Coordinate 2 nights lodging at **The Allison Inn & Spa** for Air Canada's sweepstakes winner on May 27 and 28, 2015
- 8 Content deadline for summer edition of the *Willamette Valley Visitors Association* consumer newsletter. (Biking in wine country theme.)
Respond to call-out from *Travel Oregon* regarding family camping spots in the area
- 11 Final proof-reading and content approval for *The Chehalem Valley Field Guide* (New tourism guide for The Chehalem Valley published by The Chehalem Valley Chamber of Commerce; 19,000 circulation)
- 14 Travel Oregon call-out to refer wineries to pour at PDX during *Oregon Wine Month* events at the airport
Re-confirm details for Swedish FAM on May 18th
Respond to *Travel Oregon* call-out for *Discover America Canada Canadian Traveler* column regarding local Craft Breweries & Beer Trails
- 19 Prepare itinerary and assist with restaurant reservations for *Food & Wine* writer, Dave Cohen
Re-confirm details for Norwegian FAM on May 21st
- 29 Touch base and reconfirm Food Bloggers FAM at **The Allison Inn & Spa**

THE CHEHALEM VALLEY VISITOR CENTER

2014-15 Fourth Quarter & Tourism Report

June

- 4 Coordinate 3 nights lodging at **The Allison Inn & Spa** for kick-off of *Brand USA* tour with Mexico influencers
 Respond to call-out from *NW Travel & Life Magazine* for information about local holiday tours for December issue
- 15 Prepare and send itinerary for writer from the *Fairfax Traveler* in Australia—*Travel Oregon* to host (Attending *FEAST* in September)
- 23 Respond to Travel Writer for *Epicure*

In addition to the deliverables associated with the Destination Marketing Plan, the Chehalem Valley Chamber provides a baseline level of visitor center services that includes the following:

Basic Service Requirements	Actual Service Provided:	Notes:
Staff regular Visitor Center hours: Minimum 2,000/Yr.	7/1/14 – 6/30/15 = 2,202 Hours	Note that we expand Visitor Center Hours to 7 days per week from Memorial Day to the last weekend in September
Visitor Response Procedures	Telephone calls within 3 rings Walk-ins within 15 seconds Internet requests within 24 hours	
Trained staff w/Q certification	Complete	
Visitor Center information materials & maps	Over 1,000 different brochures, maps, magazines & periodicals are stocked. Titles are maintained in an extensive database for efficient tracking.	
Travel Oregon & ODOT Materials stocked	Yes	Travel Oregon Magazine; Oregon Festival & Events Guide; Ski Oregon
After hours brochure access	Local and state maps and visitors magazines stocked in 24-hour access location in front and back of Visitor Center.	

THE CHEHALEM VALLEY VISITOR CENTER

2014-15 Fourth Quarter & Tourism Report

Basic Service Requirements	Actual Service Provided:	Notes:
Information and directions to local businesses	Visitors are provided Mapquest printouts as needed.	In addition staff is trained to act as an active concierge to visitors and often make calls to check on lodging availability or to make tour/ tasting appointments.
Fulfill relocation requests, visitor requests & new employer information	Fulfilled and mailed over 150 relocation & visitor information packets. Stocked over 500 guides for local employers to provide to new employees	Potential visitors can also make relocation requests in a form we have created online for 24 hour access.
Participate & seek marketing "best practices" through membership in Travel Yamhill Valley and ODMO	Serve as Past President on board of Travel Yamhill Valley, Board member for the Willamette Valley Visitors Association. ODMO member and annual participant in the Oregon Governors Conference on Tourism	
Publish Newberg Community Guide	9,000 of the 64-page color guide is published annually in May and distributed throughout the community.	In addition to the community guide, the chamber publishes a 44-page full color tourism magazines that has distribution of 19,000
Maintain Online calendar of events	The online calendar is available at www.chehalemvalley.org . In addition, any community member may enter their community event online	
Maintain a website with visitor information	Yes	
Provide information for employers to provide in new EE packets	Employers that regularly request directories for this purpose include: A-dec, Climax, GFU, Providence & Newberg School District	

THE CHEHALEM VALLEY VISITOR CENTER

2014-15 Fourth Quarter & Tourism Report

Basic Service Requirements	Actual Service Provided:	Notes:
Parking within walking distance	Yes	
Drinking fountain or access to water during open hours	Yes, and also for traveling pets	
Restrooms within walking distance	Yes	
ADA Accessibility	Yes	
Landline Telephone	Yes	
Quarterly report to The City of Newberg	Yes	

THE CHEHALEM VALLEY VISITOR CENTER

2014-15 Fourth Quarter & Tourism Report

Budget: Q4 April-June, 2015

	Q4	YTD 2014-15	BUDGET
REVENUE:			
City of Newberg	\$30,000.00	\$148,410.40	\$110,000.00
Newberg Chamber Contribution	\$13,625.00	\$38,877.73	\$54,500.00
TOTAL REVENUES:	\$43,625.00	\$187,288.13	\$164,500.00
EXPENSE:			
Personnel	\$16,006.39	\$59,063.54	\$67,000.00
Marketing	\$26,223.00	\$67,614.20	\$44,521.00
Overhead/Utilities, etc.	\$15,992.22	\$60,610.39	\$52,979.00
TOTAL EXPENSES:	\$58,221.61	\$187,288.13	\$164,500.00

Note: First quarter the CVCC receives an additional check from the City of Newberg that reflects a “true-up amount from the prior fiscal year.” Net Income reflects the monies received but not spent. The balance of the funds are restricted to future destination marketing projects and will balance out the remainder of the fiscal year.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 8, 2015

Order ____ Ordinance ____ Resolution XX Motion ____ Information ____
No. No. No. 2015-3223

SUBJECT: Resolution authorizing the City Manager Pro Tem to appoint recommended candidates to positions in multiple departments as listed below.

Contact Person (Preparer) for this Motion: Nancy McDonald, Interim Human Resources Director
Dept.: Administration
File No.:

RECOMMENDATION:

Adopt **Resolution No. 2015-3223** Authorizing the City Manager Pro Tem to appoint recommended candidates to positions in multiple departments as listed below.

EXECUTIVE SUMMARY:

The City Charter, Chapter VIII, Section 34(h) provides the manager pro tem “has the authority and duties of manager, except that a Manager Pro Tem may appoint or remove employees only with council approval”.

The City Manager Pro Tem Terry Mahr and Interim Human Resources Director have reviewed the recommendations for hire submitted by the position’s supervisor and recommend the hiring of said candidates to the council for their approval pursuant to the city charter as stated above.

The City of Newberg has successfully recruited for the vacant positions listed below. The recommended candidates have been vetted through the appropriate hiring procedure for each department as indicated.

Finance Department

Line Item: 31-1310-42000

Financial Analyst

Part Time, flexible hour, non-exempt, non-represented position.

- Current budget includes funding for a part time position.
- FY 2013-2014 and FY 2014-2015 included funding for a part time position, which was occupied by Elaina Canutt, who left the position with good-standing and has now returned, working in a flexible limited duration capacity to assist the department in preparing for audit as well as mandated financial reporting requirements and systems analysis. The department would like to fill the regular, part time position.
- Interview panel: Matt Zook, Caleb Lippard
- Recommended candidate: Theodore Ebor
- Completed his M.P.A. at Portland State
- Has worked for the State of Oregon since 2002:
 - Oregon Employment Department – Research Analyst
 - Dept. of Human Services – Lead Financial Analyst
 - Building Codes Division – Budget Analyst
 - Housing & Community Services – Finance Section Manager

Administration Department

Line Item: 31-1210-41000

Administrative Assistant Full Time, non-exempt, non-represented position

- Current budget includes funding for a full time position.
- Position had been filled by Colleen Miller through a temporary employment agency. Colleen quit in early August, and we need to fill the position quickly with someone to handle administrative tasks.
- Recommended candidate: DawnKaren Bevill.
- Ms. Bevill worked part time for the City for nine years and was assigned to the City Recorder's office. Her responsibilities included attending City Council and Advisory Committee meetings and recording/processing minutes. She assisted the City Recorder and acted in her stead when absent, performing CR duties including public records requests. Ms. Bevill also assisted the Human Resources Director in electronic database creation and filing, including daily administrative HR tasks.
- Since leaving the City, Ms. Bevill worked as the Confidential Assistant to the Human Resources Director at the Tillamook Creamery. Her most noted, relevant accomplishment was assisting with the company wide classification and compensation system update.
- She resides in McMinnville and is currently working in Newberg as Office Manager for a medical clinic. She is very anxious to return as an employee for the City of Newberg and possess the skill set and organizational knowledge to be able to offer immediate assistance to the Administration Department.

FISCAL IMPACT:

Funding for these positions are in the adopted FY 2015-2016 Budget under the appropriate salary and benefit line items as indicated above.

STRATEGIC ASSESSMENT:

Departments are working at less than full-staff capacity; quickly refilling these vacancies is the fiscally responsible solution.



RESOLUTION No. 2015-3223

A RESOLUTION AUTHORIZING THE CITY MANAGER PRO TEM TO APPOINT RECOMMENDED CANDIDATES TO POSITIONS IN MULTIPLE DEPARTMENTS

RECITALS:

1. Reason for Vacancies: The regular, part time Financial Analyst position and the regular, full time Administration Department Administrative Assistant position have been vacant for over one year, and were most recently filled by limited duration employees (one from a temporary agency,) both of whom have no interest in working a regular full/part time position.
2. Recommendations: The Interim Human Resources Director recommends the appointment of the candidates listed for appropriate departments as soon as possible.
3. Funding: Position funding is within the FY 2015-2016 Budget and is indicated by the applicable departmental personnel services line items.
4. Manager Pro Tem Appointment: Terry Mahr, retired City Attorney, was appointed manager pro tem on July 23, 2015, by the city council. He has reviewed the recommendations for hire submitted by the supervisors of the positions and recommends the hiring of said candidates to the vacant positions. The City Charter, Chapter VIII, Section 34(h) provides the manager pro tem “has the authority and duties of manager, except that a manager pro tem may appoint or remove employees only with council approval”.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The city council approves the appointment by the city manager pro tem of the selected candidates:

Theodore Ebora – Financial Analyst
DawnKaren Bevill – Administration Administrative Assistant

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: September 9, 2015.
ADOPTED by the City Council of the City of Newberg, Oregon, this 8th day of September, 2015.

Sue Ryan, City Recorder

ATTESTED by Mayor this _____ day of August, 2015.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 8, 2015

Order ____	Ordinance ____	Resolution <u>XX</u>	Motion ____	Information ____
No.	No.	No. 2015-3214		

SUBJECT: A resolution approving the replacement of the library roof by Columbia Roofing in the amount of \$69,249.00.

Contact Person (Preparer) for this: Russ Thomas
Motion:
Dept.: Public Works Maintenance
File No.:

RECOMMENDATION:

Adopt Resolution No. 2015-3214, authorizing the City Manager Pro-Tem to approve the replacement of the Newberg Public Library Roof by Columbia Roofing in the amount of \$69,249.00

EXECUTIVE SUMMARY:

The Newberg Carnegie Library was originally built in 1912. In 1986 an addition to the Carnegie was constructed, expanding the Newberg Public Library to its current configuration. The new expansion had the existing membrane roofing installed over the new addition, with the rolled asphalt and tar roofing retained over the pre-existing Carnegie Library. The asphalt and tar roofing over the Carnegie section of the Newberg Public Library experienced frequent leaks over the years, and was replaced with a membrane roof in 1999.

The membrane roof installed over the Library expansion section, has developed leaks, is beyond repairable condition, and has reached end of life. The membrane roof installed in 1999 over the Carnegie section of the library has recently developed numerous leaks over the past two (2) years causing damage to portions of the interior ceiling and walls, has been patched and repaired several times, and is beyond repairable life.

Replacement of the entire Newberg Public Library roof with a new membrane roof system will prevent further water damage to the building structure and interior from the leaks in both roofing sections.

FISCAL IMPACT:

Replacement of the Newberg Public Library roof is a budgeted Facilities Capital Project in the current fiscal year. We received three bids with Columbia Roofing coming in the lowest at \$69,249.

STRATEGIC ASSESSMENT:

Areas within the Newberg Public Library Carnegie room have experienced water damage of the lath and plaster ceiling and walls. Other areas of the gypsum sheetrock and suspended ceiling in the library expansion also have water damage due to the due leaking roof. Water damage caused by the leaking roof can also cause potential dry rot in the wood members of the structure, and an unhealthy building atmosphere should it create mold growth. Replacement of the Newberg Public Library roof will prevent further water damage to the structure and interior ceilings and walls, potential damage to the library collection, preserve building health, and reduce additional repair costs.



RESOLUTION No. 2015-3214

**A RESOLUTION APPROVING THE REPLACEMENT OF THE LIBRARY
ROOF BY COLUMBIA ROOFING IN THE AMOUNT OF \$69,249.00**

RECITALS:

1. The Newberg Public Library roof has developed leaks in several areas that are causing water damage to the interior structure, ceilings and walls.
2. The Newberg Public Library roof reached end of life and is beyond the ability to make effective repairs.
3. Delaying replacement will continue and expand the water damage to the structure and interior of the library. Due to the age and condition of the Newberg Public Library roof, it is in need of a complete replacement.
4. Proposals for replacement of the Newberg Public Library Roof were solicited, receiving three (3) proposals.
5. Columbia Roofing and Sheet Metal was determined to be the lowest bid proposal in the amount \$69,249.00. The details of the bid proposal are described in Exhibit "A" which is hereby attached and by this reference incorporated.
6. The Newberg Public Library Roof replacement project proposal includes a five (5) year warranty for workmanship for Columbia Construction Service, Inc. and a twenty (20) year No Dollar Limit (NDL) manufacturer's warranty.
7. Work on the project will begin within 90 days after notice to proceed. The project is expected to be completed within 21 days once work has commenced, not including rain delays.
8. The cost of the Newberg Public Library roof replacement was approved in the FY 2015-2016 City budget.

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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 Pro-Tem to approve the replacement of the Newberg Public Library Roof by Columbia Roofing and Sheet Metal, in the amount of \$69,249.00, per scope of work as attached in Exhibit "A", which is hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: September 9, 2015.

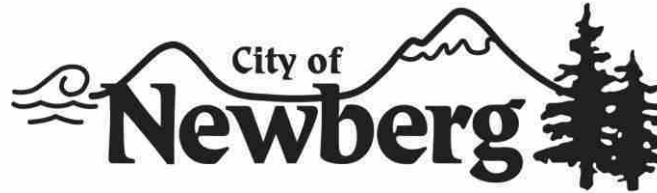
ADOPTED by the City Council of the City of Newberg, Oregon, this 8th day of September, 2015.

Sue Ryan, City Recorder

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

Bob Andrews, Mayor

Newberg City Hall
503.537.1240
www.newbergoregon.gov



Public Works Department
Maintenance Division
503.537.1234

PUBLIC WORKS DEPARTMENT

500 W. Third Street • Newberg, Oregon 97132 • 503.537.1234 • Fax 503.554.9411

July 29, 2015

**Request for proposal to replacing membrane roof system at:
Newberg Public Library;
501 E Hancock
Newberg Oregon, 97132**

Provide and apply replacement membrane roofing system for entire Library building, as per area photograph attached.

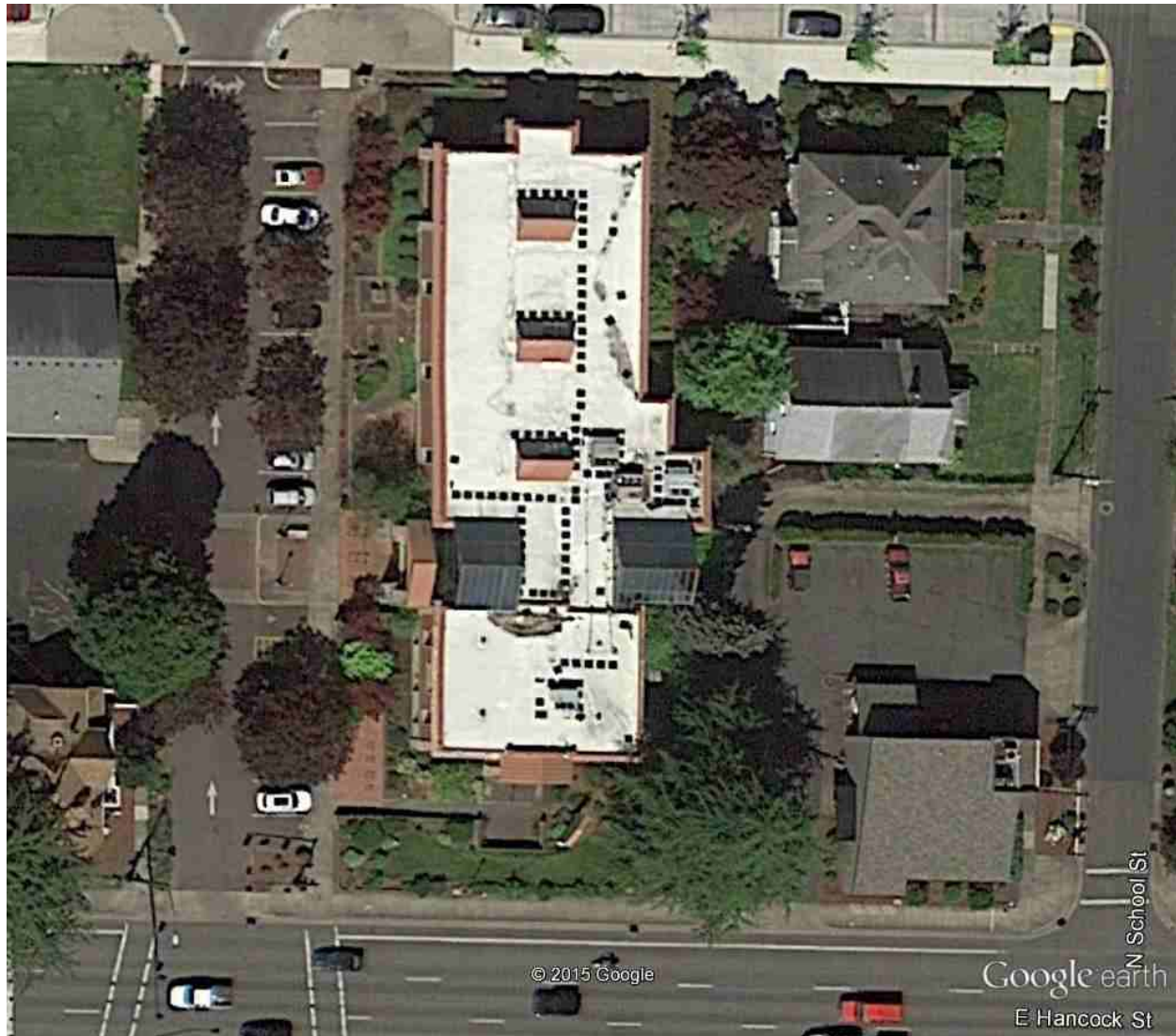
- Roofing replacement to be a commercial grade system with a minimum thickness of sixty (60) mil, installed as per manufacturer specification.
- Finished roofing system to provide rain and water tight roofing system.
- Finished roofing color to be white.
- Replacement roof to maintain required fire rating, and meet wind uplift conditions.
- Roofing system shall be mechanically attached.
- All penetrations, including pipes, flanges, units, fans, etc. to be properly flashed, or otherwise sealed by the membrane system, as per manufacture specification.
- All materials used shall be new.
- Contractor shall provide any necessary rain protection during replacement/installation of roofing system.
- Full use and operation of the Library to be maintained during installation.
- Contractor to provide all necessary power, tool, equipment, and sanitation facilities for work crew necessary to complete project.
- Contractor to provide a complete cleanup of job site upon completion, removing all tools, and disposal of any debris removed to facilitate installation of new roofing

Warranty is to be for a minimum of five (5) years on workmanship, and a twenty (20) years manufacturers, No Dollar Limit (NDL) warranty on materials.

Proposals are to include all pricing, projected days to begin work after notice to proceed, and projected days to complete project once work has commenced.

Proposals to be received by the City of Newberg, at the Public Works Maintenance Office, 500 W 3rd Street, Newberg Oregon, 97132, by 4:00 PM, August 7, 2015

Project Site: Newberg Public Library
503 E Hancock Street
Newberg, Oregon 97132





18525 SW 126th Place
Tualatin, Oregon 97062-6074
(503) 684-9123 Fax (503) 684-1458
www.reroofnow.com

Proposal and Construction Contract

Date Of Proposal:	8-7-2015	This Proposal May Be Withdrawn If Not Accepted By:	9-7-2015
Proposal Number:	222740		
<p align="center">This Construction Contract Is Entered Into As Of The Effective Date Of Contract, By And Between Columbia Construction Services, Inc. (An Oregon Corporation), Hereinafter Called "Contractor" And The Party Or Parties Signing Below, Hereinafter Called "Owner" Or "Owner's Representative."</p>			
Project And Owner Information		Salesman:	Vince Hanewinkel
Project Address	City of Newberg Library 503 East Hancock St Newberg, OR 97132	Project Telephone	971-246-0423
		Project Fax	
		Project Other Telephone	
Owner Name	Same as above	Owner Telephone	
Owner Address		Owner Fax	
		Owner Other Telephone	
Other Contact Info	Clinton Alley clinton.alley@newbergoregon.gov	Billing/Mailing Address	(If Applicable)

General Scope of Work

1. Comply with all federal, state and local codes including proper OSHA fall protection and other requirements for the safety of our crews.
2. Pay for and obtain all necessary building permits and inspections, invoiced at cost in addition to the base contract amount.
3. Keep the jobsite neat and orderly, removing all construction debris at the end of the job and disposing of off site in a legal manner.

Additional Work Performed

In case of any modifications or additions to the work covered by this contract, whether Owner, a Public Body, or Inspector directs it, the cost shall be added to the contract price. Contractor is entitled to be paid for additional work whether reduced to writing or not. Owner shall also pay for additional work incurred because of unusual, unanticipated or concealed conditions, such as but not limited to dry rot, improper existing structural conditions and other items not known at the time of entering into this contract. Additional cost of labor will be invoiced at \$ 92.00 per hour, as well as the direct cost of subcontracts, mobilization, and materials plus 18% for overhead and profit.

Terms of Sale

On site material and mobilization costs will be invoiced the first day of the project and are due within fifteen (15) days of invoice date. Upon project completion, the remaining balance is likewise due within fifteen (15) days of invoice date in the full amount of the stated invoice price. If the project is not complete by the end of any given month during the course of service, billing will be provided on the 25th of the month for projected work completed and materials stored at the site through the end of the month. Payment for partial progress invoices will be due the 10th day of the month following the invoice date. Final payment, and all release of liens are due within fifteen (15) days of receipt in the full amount of the invoice including all Change Orders. All manufacturer and workmanship warranties will be considered in effect upon satisfaction of all stated payment terms. Owner or Owner's representative agrees that if the Contractor has not been paid in full in accordance with the terms stated above, Owner will pay a late charge to Contractor of 1.5% of the unpaid balance per month and all necessary collection costs including legal fees. No other funds may be withheld. Payment by credit card will be accepted with Columbia Construction Service, Inc. Authorization and Customer authorization provided at time of contract signing. The credit card will be charged at the time of invoice presentation, either by USPS mail, email, or hand delivery. A service fee of 4.25% will be added for credit card payments. If credit card payment information is not provided at time of contract signing, or if credit card cannot be processed as presented, standard contract terms will apply, upon pre-approved credit terms. If credit terms are not approved, cash payment will be required at time of contract signing.

General Specifications

1. Have a pre-roofing conference with the necessary parties in this project to review our operations, need for access, and any notifications you may need at your facility. This will include hours of operation and any special needs you may have for the project.
2. Remove the existing roof membrane assembly (and sheet metal) down to the existing roof substrate.
3. Set up all necessary safety and fall protection equipment to meet or exceed (**OREGON**) O.S.H.A. Safety Standards and comply with all O.S.H.A. safety requirements
4. Have a registered structural engineer inspect and provide us with written documentation stating that the existing roof system can withstand the additional weight of the new roof system. This is a requirement from the city and documentation must be provided prior to installing the new roof system for re-cover assembly.
5. The owner will need to provide proof of an engineer's review that the structure will hold the weight of the new roofing system prior to the beginning of the work on any ballasted roof system.
6. Keep the site and the roof clean of all debris during the process of the work. We will dispose of all debris off site in a legal manor.
7. We secure all materials on your roof and store them in a proper manner to protect your building and the materials until used in the roofing process.
8. Roofing replacement to be a commercial grade system with a minimum thickness of sixty (60) mil, installed as per manufacturer specification.
9. Finished roofing system to provide rain and water tight roofing system. Roof shall be watertight at the end of each work day.
10. Finished roofing color to be white.
11. Replacement roof to maintain required fire rating, and meet wind uplift conditions.
12. Roofing system shall be mechanically attached.
13. All penetrations, including pipes, flanges, units, fans, etc. to be properly flashed, or otherwise sealed by the membrane system, as per manufacture specification.
14. All materials used shall be new.
15. Contractor shall provide any necessary rain protection during replacement/installation of roofing system.
16. Full use and operation of the Library to be maintained during installation.
17. Contractor to provide all necessary power, tool, equipment, and sanitation facilities for work crew necessary to complete project.
18. Contractor to provide a complete cleanup of job site upon completion, removing all tools, and disposal of any debris removed to facilitate installation of new roofing

Scope of Work

TPO Mechanically Attached Systems

1. Tear off and dispose of all parapet wall and curb base flashings to allow for proper installation of the new roofing system.
2. Furnish and install tapered cricket system at noted area of ponding water to promote proper drainage.
3. Furnish and install a ½" fan fold board over the existing roof system and mechanically attach. This will maintain the existing fire rating for the new roof assembly.
4. Over the fan fold, furnish and install a new 60 mil reinforced TPO roof membrane and mechanically attach to the substrate.
5. All field and base flashing seams will be cleaned before being hot air welded.
6. Furnish and install new TPO base flashings around all curb penetrations.
7. Furnish and install new TPO base flashings that will extend up to the base of the skylight and metal siding.
8. Fabricate and install new 26 gauge counter flashings around the skylights and mechanically attach with neoprene gasketed fasteners.
9. Furnish and install new TPO base flashings around the roof hatch.
10. Furnish and install a new 26 gauge metal hatch flashing under the metal flashing flange of the roof hatch to hold the TPO membrane in place.
11. Furnish and install pre-manufactured inside/outside TPO corner flashings at curb penetrations, thru wall scupper drains and wall flashings.
12. Furnish and install new pre-manufactured pipe boots on all pipes up to 6" in diameter complete with a new stainless steel clamps and sealant.
13. All pipes where a pre-manufactured pipe boot is not feasible will be field wrapped with unreinforced TPO membrane complete with a new stainless steel pipe clamp and sealant.
14. Furnish and install TPO patches at all T-Joints in the field membrane.
15. At all wall supports, furnish and install pre-manufactured TPO pitch pans.
16. Furnish and install a one part poly-urethane rubberized pitch pan sealant in each pitch pan.
17. Furnish and install new TPO base flashings at all parapet walls that will extend up and across the top of all walls.

18. Fabricate and install new TPO clad thru wall drain flashings and mechanically attach to the substrate. Furnish and install new TPO flashings to the drain.
19. Remove, clean and reinstall existing stainless steel scupper drain that drains through awning roof.
20. Fabricate and install new 26 gauge galvanized clip metal to be installed along the outside of all parapet walls. Mechanically attach the clip to the wall.
21. Fabricate and install new pre-painted standard color 26 gauge galvanized standing seam coping cap around the perimeter of all parapet walls. All new metal coping caps will be installed by hooking the front face into the clip metal to secure the face of the metal to the building. Mechanically attach to the wall with new neoprene gasketed fasteners.
22. Fabricate and install new pre-painted standard color 26 gauge metal counter flashings around each HVAC unit and mechanically attach to the curb with new neoprene gasketed fasteners.
23. Upon completion of the above work, remove all tools and debris and leave the site in a clean and orderly condition.

Warranty:

This project includes a 5 year warranty for workmanship for labor from Columbia Construction Service, Inc. and a 20 year NDL (No Dollar Limit) manufacturer's warranty from the manufacturer.

Total Lump Sum for the specifications listed above: \$53,535.00

Option to upgrade from ½" fan fold to 1.5" poly iso insulation add: \$8,428.00

Authorized Initial

Option to install walk pad at unit access panels, roof access, and existing locations add: \$7,286.00

Authorized Initial

Schedule

Due to existing Contracts and backlog, we will begin work within 90 days of after notice to proceed. Project is expected to be complete within 21 days once work has commenced, not including rain delays.

Columbia Roof Advantage*

See Exhibit "A" – Attached

*All GAF Single-Ply and Modified Bituminous Roof Systems Qualify for an Additional
25% Longer Warranty While the Columbia Roof Advantage is in Force*

1. Owner accepts the terms of the Columbia Roof Advantage (CRA) Roof Owner's Interface (ROI) for yearly maintenance and cleaning services at the added rates as indicated on Attachment "A", included herein.

Silver	Price per Year	<u>\$1,250.00</u>	<input type="checkbox"/> Accept	<input type="checkbox"/> Decline
Silver Plus	Price per Year	<u>\$1,350.00</u>	<input type="checkbox"/> Accept	<input type="checkbox"/> Decline
Gold	Price per Year	<u>\$2,250.00</u>	<input type="checkbox"/> Accept	<input type="checkbox"/> Decline
Platinum	Price per Year	<u>\$4,275.00</u>	<input type="checkbox"/> Accept	<input type="checkbox"/> Decline

General Exclusions

1. We exclude all design calculations, fitness and completeness for this project of any solutions and design work that would normally be reviewed by a trained architect, engineer, or other construction professional. The Owner is responsible for the errors and omissions that may occur from our suggested scope of work and it is recommended that the Owner have the scope of work reviewed by a licensed construction professional.
 2. We exclude all costs associated with concealed conditions that may arise during the course of inspection, course of construction, or discovered at a later date.
 3. We exclude all government fees for this project. This exclusion includes any special services, inspections, building permit fees, side walk permits, street closure permits, other fees, and the cost of securing those government requirements.
 4. We exclude costs of testing, verifying results and changing scope of work based on any hazardous materials.
-

Contract of Service

The General Terms And Conditions Set Forth Below Shall Be Considered Part Of This Contract

Mold/Fungi/Microbe Exclusion: Mold, fungi and/or microbes are present in many locations. Mold, fungi and/or microbes may be dangerous, may cause many health related problems and may be deadly in some cases. Columbia Construction Services, Inc. does not inspect for mold, fungi and/or microbes. The Company is specifically not qualified to determine if mold, fungi and/or microbes are present. It is the responsibility of the Owner of the building to determine if mold, fungi and/or microbes are present. It is also the responsibility of the Owner of the building to notify Columbia Construction Services, Inc. within 24 hours of occurrence of any leak where mold, fungi and/or microbes may occur or may be present. The parties hereby agree that Columbia Construction Services, Inc. shall not be liable for any damages by not identifying any mold, fungi and/or microbes present or occurring at a later date, as well as detrimental health effects from mold, fungi and/or microbes either directly or indirectly caused by our activities, materials used, processes, workmanship or lack of recognition of those conditions.

Contractor Services: Contractor agrees to furnish all equipment, materials, labor, and supervision to construct the project described in the scope of work for this project in a good and workmanlike manner in accordance with all labor, building, and other laws and codes in accordance with the building plans, specifications or scope of work.

Plans and Specifications: The project shall be completed according to the scope of work attached, which has been approved by the Owner by the terms of this contract. If the plans and specifications or the scope of work are from the Contractor, Contractor warrants that the work will be performed in accordance with the Contractor's plans, specifications, or scope of work. If the Owner or a Third Party prepares the plans or specifications, and the Contractor's work does not remedy the diagnosed problem, then the Contractor shall not be liable for any additional repairs due to design defects.

Permits and Assessments: Contractor will obtain all required permits and bill for the service and permit cost, including but not limited to sidewalk closure, street closure, parking permits and other governmental service permit charges that are project specific. Owner will pay for assessments and charges from public agencies and utilities for financing or reimbursement for the cost of sewers, storm drains, water service and other utilities, including revolving fund charges, hook-up charges and the like.

Labor and Materials: Contractor shall pay for all necessary labor and materials used in the construction of the project. No waiver of release of a construction lien given by Contractor shall be binding until all payments, due to Contractor when the release was executed, have actually been made.

Fixed-fee contracts: All of our quoted prices are fixed for only 30 days from the date of quote. If you have not signed the contract and approved shipment of materials within the 30-day period, we do have the option of raising the price of the contract due to unforeseen economic conditions. We may only be able to hold labor prices for up to an additional 30 days. If the project is delayed beyond these conditions, the cost of the fixed-fee contract is subject to change with a negotiated revised price.

Time and material contracts: Our standard labor rate and our materials' markup are subject to change with a 30-day written notice.

Budgets: All of our quotes for budgets are strictly budgets and are not quoted for a fixed-fee contract for more than 30 days. See the fixed-fee contract statement above.

Conflict Between Construction Contract, Plans, Specifications, And Scope Of Work: These three documents are intended to supplement each other. However, in case of conflict, the scope of work shall control over the plans, which shall control over the specifications, and the terms of the Construction Contract shall control over both.

Additional Work: In case of any modifications or additions to the work covered by this contract, whether Owner, a Public Body, or Inspector directs it, the cost shall be added to the contract price. This added cost consists of the cost of added subcontracts, labor and materials, plus 18% for overhead and profit. Contractor is entitled to be paid for additional work whether reduced to writing or not. Owner shall also pay for additional work incurred because of unusual, unanticipated or concealed conditions, such as but not limited to dry rot, improper existing structural conditions and other items not known at the time of entering into this contract.

Allowances: If the cost of performing the work covered by an allowance is greater or less than the allowance, then the contract price shall be adjusted accordingly. Contractor shall use his/her own judgment performing the work covered by allowances. However, if an Owner requests that work covered by an allowance be performed in a certain way and the cost exceeds the allowance, Owner shall pay the additional cost in advance.

Delays: Contractor shall not be held liable for any delay in completion of the contract if delay is caused by Acts of God, bad weather, labor trouble, acts of public utilities, bodies or inspectors, extra work or acts of Owner or Owner's agent if the delay is caused by other factors unforeseen and beyond the reasonable control of the Contractor.

Right to Stop Work: Contractor has the right to stop work if any payment is not made to Contractor. The job may be kept idle until all payments due have been received. Additional costs of stopping work, lying idle or re-mobilizing will be billed to the Owner and the Owner will make full payment for delay before work will commence.

Damage to Project: Owner will be responsible for procuring, at Owners own expense, and before the Project is started, fire insurance with course of construction, vandalism, and malicious mischief clauses included. Such insurance shall equal at least the contract price with loss, if any, payable to any beneficiary under any deed of trust covering the Project. Contractor may procure such insurance as Owner's agent and at Owner's expense, but is not required to do so. If the Project is destroyed or damaged by an accident, disaster, or calamity, including fire, flood, storm, landslide, subsidence or earthquake, or by vandalism or theft, the Owner shall pay Contractor for the extra work done in rebuilding or repairing the Project as explained in Additional Work section above. Contractor will not assume liability for any interior damage or consequential damages including but not limited clean up caused by normal operation including dust infiltration, fumes from normal construction process, debris during normal operation and other unforeseen or typical pollutants caused by the construction process. Contractor will not be liable for consequential damages or interior damages, loss of use or other damages during or after the construction period.

Workers Compensation and Liability Insurance: Contractor will maintain in full force and effect, a workers compensation insurance policy and comprehensive liability insurance policy in amounts not less than required by the specifications, or, as noted in the section entitled "Terms Of Sale", and shall furnish certificates of insurance upon request to Owner before commencing work.

Legal Action: Either party against the other can commence no suit or action related to or as a result of the performance of the contract more than two years after the completion of the work under this contract. This limitation applies to all action of any character, whether at law or in equity, and whether sounding in contract, tort, or otherwise. This limitation shall not be extended by any negligent misrepresentation or unintentional concealment, but shall be extended as provided by law for willful fraud, concealment, or misrepresentation.

Arbitration: All controversies between Contractor and Owner arising out of this project and this agreement shall be resolved through mandatory binding arbitration which shall be had in accordance with the rules of the American Arbitration Association existing at the time of the request for arbitration is filed. The arbitrator shall be empowered to decide the controversy and issue a binding award, even if one or more parties declines, neglects, or refuses to participate in the arbitration. Notwithstanding the above, nothing herein shall prevent Contractor from filing a construction lien and foreclosing the same. The parties consent to any arbitration as allowed under this provision to occur in the governing municipality or county.

Attorneys Fees: In the event of arbitration or lawsuit to enforce or interpret this contract, or to foreclose a construction lien, the prevailing party shall be entitled to recover from losing party, the prevailing party's attorneys fees and costs incurred by the prevailing party in that proceeding, and the prevailing party in any appeal therefore shall be entitled to an award of its reasonable attorney's fees and costs incurred on the appeal.

Taxes And Assessments: Owner is responsible for special assessments and taxes of all kinds. No sales tax is included in this contract unless noted.

Notice: Any notice given from one party to the other shall be deemed received when deposited in the US mail using first class prepaid postage, and addressed to the last known address of the other party.

Insolvency: If the Owner makes an assignment for the benefit of creditors or becomes insolvent, the Contractor has the right to cancel this agreement.

Assignment: Contractor is not allowed to assign this agreement or payment due to anyone without the Owner's written consent.

Material Warranty: All materials provided in this contract are subject only to the manufacturers or distributor's guaranty or warranty. Contractor hereby expressly disclaims any material warranties, either express or implied, including but not limited too the implied warranties of merchantability and fitness for a particular purpose Owner further agrees that the liability of the Contractor for installation defects is hereby agreed limited to only the replacement or correction of the installation defect, and the installation thereof, and no other claims or demands may be made upon or allowed against the Contractor including but not limited to claims for damage caused to other parts of the structure due to any defect, or any other incidental or consequential damages caused by the defective installation or the defective material.

Standard Terms for Residential:

We will not be liable for any interior damage or clean up, including damage caused by falling dust or debris.

Price is subject to change due to the volatility of the market.

We will not be liable for any sheet rock cracks or paint peeling due to removal of existing roof. Note: We advise removal of any paintings or mirrors before tear-off.

We exclude costs of testing, verifying results, and changing scope of work based on any hazardous materials.

Home Solicitation Sales Buyer's Right To Cancel: If this agreement was solicited at a residence other than that of the seller and you do not want the goods or services, you may cancel this agreement without any penalty, cancellation fee, or other financial obligation by mailing a notice to the seller. The notice must say that you do not want the goods or services, and must be mailed before 12 midnight of the third business day after you sign this agreement. The notice must be mailed to: Columbia Construction Services, Inc., 18525 SW 126th Place, Tualatin, Oregon 97062-6074. However: you may not cancel if you have requested the seller to provide goods or services without delay because of an emergency, and (1) the seller in good faith makes a substantial beginning of performance of the contract before you give notice of cancellation, and (2) in case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

I have read and understand the above Contract of Service, and agree to the terms as part of any contractual relationship between myself as Owner (or Owner's Representative), and Columbia Construction Services, Inc. as Contractor.

Accepted by owner's representative:

Accepted by Columbia Construction Service, Inc.

Name(Printed)

Vince Hanewinckel

Signature

Signature

Title

Title

Date

Date

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 8, 2015

Order ____ No.	Ordinance ____ No.	Resolution <u>x</u> No. 2015-3215	Motion ____	Information ____
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SUBJECT: City Hall Heating Ventilating, and Air Conditioning (HVAC) Controls Upgrade

Contact Person (Preparer) for this Motion: Russ Thomas
Dept.: Public Works Maintenance
File No.:

RECOMMENDATION:

Adopt Resolution No. 2015-3215, authorizing the City Manager Pro Tem to approve the replacement of City Hall's outdated HVAC control system.

BACKGROUND:

Alliant Systems is currently under contract for providing maintenance and repair services for the City's Heating Ventilating, and Air Conditioning (HVAC) systems. City Hall's HVAC control system was installed during the reconstruction of the building in 1999. The HVAC control system is antiquated, no longer supported by replacement parts and is in poor working condition. The City Hall HVAC control system is experiencing an increasing rate of control system failures, resulting in emergency repair costs outside the current HVAC maintenance contract to maintain basic system functionality. Many of the City Hall HVAC control system components are in danger of catastrophic failure, and need to be replaced to maintain functionality of the HVAC system. A piece meal replacement of failing components of the City Hall HVAC control system would not correct the operations problems, due to the existing antiquated control system.

The entire City Hall HVAC control system has been inspected and reviewed by the City's HVAC contractor, Alliant Systems, who has submitted a proposal to correct the operational problems through the replacement of the malfunctioning control system and components (Exhibit "A").

Replacement and Upgrade of the City Hall HVAC Control system will provide precise control based on a volume and discharge air temperature, improved demand ventilation control, central and remote access visualizations and control and full time of day scheduling. An up to date control system will increase energy efficiency, reducing operational costs.

FISCAL IMPACT:

The cost of the HVAC control system replacement upgrade is \$66,979.00. The new system will increase the HVAC system energy efficiency, qualifying for an estimated Energy Trust of Oregon incentive of \$13,288.50, (Exhibit "B") reducing the final HVAC control system replacement cost to an estimated \$53,690.50, when completed. Funding for the HVAC Control System replacement and upgrade is included in the approved FY 2015-2016 budget.

STRATEGIC ASSESSMENT:

Replacing the existing malfunction control system will reduce operational expenses by eliminating emergency service calls and repairs outside of the system maintenance contract, improve energy efficiency, and reduce annual costs for HVAC electric and natural gas service. Control system replacement will provide more consistency in facility temperature, and reduce staff requirements for maintenance and monitoring of the current malfunctioning control system.



RESOLUTION No. 2015-3215

A RESOLUTION AUTHORIZING THE CITY MANAGER PRO TEM TO APPROVE THE REPLACEMENT OF THE CITY HALL HEATING VENTILATING, AND AIR CONDITIONING (HVAC) CONTROL SYSTEM BY THE CITY'S HVAC CONTRACTOR, ALLIANT SYSTEMS, IN THE AMOUNT OF \$66,979.00

RECITALS:

1. The City's HVAC control system in City Hall is outdated, in poor working order, experiencing frequent malfunctions, and is in danger of complete system failure.
2. The temperature is not consistent in all areas of City Hall, is difficult to control, and requires constant monitoring and emergency repair service calls.
3. The current malfunctioning HVAC control system is not energy efficient, increasing maintenance, repair, and operational costs.
4. Replacement of the HVAC control system will improve energy efficiency, eliminate constant monitoring by staff and eliminate the need for emergency repairs, reducing costs for system maintenance, repair, and operation.
5. Replacing the entire City Hall HVAC control system at one time will reduce the cost of replacement of the control system in a piece meal approach, minimize facility and staff disruptions, and realize immediate operational cost savings.
6. The replacement of the City Hall HVAC control system has been reviewed, and has been approved by the Energy Trust of Oregon as eligible for an estimated energy efficiency incentive of \$13,288.50, further reducing final replacement costs.
7. Alliant Systems is the current City of Newberg's HVAC maintenance and repair contractor and has extensive knowledge of the City Hall HVAC system, which will minimize replacement, maintenance and operational costs.
8. The cost of the HVAC control System replacement was approved in the FY 2015-2016 City budget.

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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 Pro Tem to approve the replacement of the City Hall HVAC control system by the City's HVAC contractor, Alliant Systems, in the amount of \$66,979.00, per scope of work as attached in Exhibit "A", which is hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: September 9th, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 8th day of September, 2015.

Sue Ryan, City Recorder

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

Bob Andrews, Mayor



Providers of innovative mechanical services HVAC ■ Plumbing ■ Service ■ Controls ■ Energy Services ■ Engineering

August 18, 2015

Proposal No. 8675

Clinton Alley
City of Newberg
500 W Third Street
Newberg, OR 97132

Subject: City Hall Controls Upgrade

Dear Clinton,

Alliant Systems is pleased to submit for your consideration our proposal to the City Hall controls system. Scope and pricing are based on our recent site visit, conversation and history with this facility.

Inclusions:

- Replace antiquated control system with Innotech DDC controls. Retrofit includes (2) rooftop package units and (22) individual zones (VAV boxes).
- Demo of existing controls serving rooftop units and individual zones (VAV boxes).
- Furnish and install new Innotech controllers for (2) rooftop units and (22) individual zones (VAV boxes.) Includes (22) new deluxe LCD wall sensors, duct transducers, relays and actuators at the rooftop unit. New actuators and sensors for each zone, outside air and relative humidity sensors and control wiring.
- Furnish and install new communication wiring/network.
- Provide a system component and floor plan with graphics and remote notification. This will provide precise control based on a volume and discharge air temperature, improved demand ventilation control, central and remote access visualization and control and full time of day scheduling.
- Furnish and install Innotech Magellan Explorer software (custom graphics, animations, system navigation and trending).
- Furnish and install FM web server to provide remote notifications.
- Programming, scheduling and commissioning.
- Labeling.
- As-built drawings.
- Owner training including Innotech owner manuals, drawings, and schematics.
- Project management and install coordination with City of Newberg personnel and their tenants.
- Alliant Systems will work with Energy Trust of Oregon to obtain all available incentive monies that this project may qualify for.

Project Price\$66,979.00

Exclusions:

- Premium-pay for weekend and after hours work.
- Internet connection.
- Work outside of proposed scope.
- Assumes the use of existing onsite PC.
- Repairs to existing mechanical systems.
- Cutting, patching and painting if necessary.

We appreciate the opportunity to assist you with this project. Please do not hesitate to contact me if you have any questions or concerns regarding this proposal. My direct contact information is below. If this proposal is acceptable to you, please sign and date below, and return to my attention.

Regards,

Nate Suva
Account Executive
503.619.4074 direct
n.suva@alliant-systems.com

Authorizing Signature / Date

2015 Custom Incentive Increase
Existing Buildings



Program Use Only			
Project ID	ETEBPS1530260697	FastTrack ID	P00000975171

Participant Information

Legal Name	City of Newberg		
Assumed Business Name	City of Newberg		
Contact Name	Clint Alley	Title	Facilities Manager

Project and Facility Information

Project Name	Newberg City Hall- Controls		
Site Address	414 E 1st St.	City	Newberg
		State	OR
		Zip	97132

2015 Custom Incentive Increase: Energy Trust increased Custom incentives it will provide for qualifying all gas-only and dual-fuel (gas and electric) Custom measures installed after August 15, 2015. This increase is based on \$0.25 per kWh and \$2.50 per Therm capped at 70% of total eligible project cost. Following is an explanation of the revised incentive amounts for your Custom project measures as a result of this increase.

Incentives

	Description	Electric Savings (kWh)	Gas Savings (therms)	Project Cost	Original Incentive	Revised Incentive
EEM#2	EEM 2: Controls upgrade on RTUs: replace VAV controllers with new DDC, implement SAT & static pressure reset based on zonal demand, scheduling and optimum start/stop [BECUSTCONT]	52,914	24	\$66,979.00	\$13,277.00	\$13,288.50
Original Calculation					\$13,277.00	
Revised Calculation					\$13,288.50	
Increase					\$11.50	

Final incentive amounts paid may vary from estimates listed herein depending on Participant's final installed measures, documented measure installation completion dates, costs, actual operating hours, usage, and energy savings calculations. Determination of eligibility for Energy Trust incentives rests solely with Energy Trust. Incentives are subject to funding availability. All other terms and conditions of the Participant's Form 120C incentive offer for Participant's Custom project remain in full force and effect and are incorporated by reference.

Reviewed by	Jeffrey Schwartz	Signature	Digitally signed by Jeffrey Schwartz DN: cn=Jeffrey Schwartz, o=ICFI, ou=EET, email=Jeffrey.Schwartz@icfi.com, c=US Date: 2015.08.18 14:11:37 -07'00'	Date	08/18/2015
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Jeffrey
Schwartz

Form 120C
Incentive Application - Custom
Existing Buildings



ICF International is a Program Management Contractor for Energy Trust of Oregon.

Program Use Only		v04
Project ID	ETEBPS1530260697	FastTrack ID P00000975171
OPTION 1	<input type="checkbox"/>	
OPTION 2	<input type="checkbox"/>	

Participant Information

Legal Name City of Newberg			
Assumed Business Name			
Contact Name Clint Alley	Title Facilities Manager		
Mailing Address 414 E 1st St.	City Newberg	State OR	Zip 97132
Telephone (503) 537-1240	Cell Phone (971) 246-0423	Fax	
Email clint.alley@cj.newberg.or.us			

Project and Facility Information

Project Name Newberg City Hall- Controls	Facility County Yamhill		
Site Address 414 E 1st St.	City Newberg	State OR	Zip 97132

Proposed Savings Summary (to be completed by Existing Buildings Program Technical Manager)

Based on our review of the information provided, we have identified the following energy-efficiency measures (Measures) as potentially eligible for Energy Trust incentives. Estimated incentives have been calculated in accordance with current program requirements and incentive levels. Energy Trust will notify Participant in the event that any subsequent on-site pre-installation review of a listed Measure by Program personnel results in a revision to the estimated savings or incentives below. The actual incentive amount paid to Participant may be different than the estimated amounts listed depending on our review of the Measures actually installed by the Participant, the Measure installation date, and the final Measure and project cost documentation, however, in no event would Energy Trust pay more for any identified Measure than the estimated amounts set forth below.

Document	Date	By
Analysis	3/10/2015	Energy350
Bid	10/17/2014	Alliant Systems
Other:		
Check all that apply: <input type="checkbox"/> A/C <input checked="" type="checkbox"/> Controls <input type="checkbox"/> Lighting <input type="checkbox"/> Motors <input type="checkbox"/> VFDs <input type="checkbox"/> Other (specify)		

Energy Efficiency Measure	Estimates			
	EEM Cost	Incentive	kWh	Therms
EEM 2: Controls upgrade on RTUs: replace VAV controllers with new DDC, implement SAT & static pressure reset based on zonal demand, scheduling and optimum start/stop [BECUSTCONT]	\$66,979.00	\$13,277.00	52,914.0	24.0
Totals	\$66,979.00	\$13,277.00	52,914.0	24.0

Pre-authorization Signature Required	
Reviewed by Jeffery Schwartz <i>Existing Buildings Program Technical Manager</i>	Digitally signed by Jeffrey Schwartz DN: cn=Jeffrey Schwartz, o=ICF, ou=EET, email=Jeffrey.Schwartz@icfi.com, c=US Date: 2015.08.18 14:08:56 -07'00'

Jeffrey Schwartz
Z

Form 120C
Incentive Application - Custom
Existing Buildings



Schedule and Incentive Reservation Period

Participant will take the following actions to complete timely installation of the Measures and agrees to notify Energy Trust immediately of any delays to the project schedule or of any decision to abandon the project during the incentive reservation period. Equipment purchases or other project construction activities conducted before submitting this application to Energy Trust are done at risk and can negatively impact a project's eligibility for Energy Trust incentives. Participant agrees to notify Energy Trust during the incentive reservation period of any changes or change orders issued to contractors or installers that will materially affect the installation costs or the anticipated savings of the Measures.

Estimated Start Date: 8/31/2015

Estimated Completion Date: 12/31/2015

INCENTIVE RESERVATION PERIOD. Once Participant accepts Energy Trust's offer to reserve the estimated incentives identified above (by signing and submitting this agreement with the required time period), Energy Trust will reserve the estimated incentive amount for Participant for so long as Participant complies with the terms and conditions of this agreement and continues to make progress to complete timely installation of the Measure(s); provided however, that Energy Trust will not generally reserve incentives for longer than 24 months from the date of Participant's signature. Energy Trust may revise a reserved incentive amount during the reservation period in the event that any on-site pre-installation review by the Program causes a change to any identified Measure that affects incentives eligibility. Determination of appropriate progress during the reservation period rests solely with Energy Trust and if, at any point Energy Trust determines that Participant is not progressing appropriately and in good faith to complete timely installation of the Measures, the reserved incentive funds may be withdrawn.

Funds that have been reserved are not transferable to other projects, sites or facilities. Should Participant still wish to receive incentives after a reservation withdrawal by Energy Trust, it would be necessary for Participant to submit a new application and any new application would be subject to the Program requirements, including incentive funds availability and levels, in effect at the time of re-submittal.

Additional Terms and Conditions

1. APPLICATION: This **Form 120C** must be filled out completely, truthfully and accurately. The Program may require Participant to submit additional application documentation for certain Measures. Participants are advised to retain a copy of this application and any accompanying documentation submitted to Energy Trust of Oregon, Inc. under this Existing Buildings program (Program). The Program Management Contractor (PMC) provides services for the Program on behalf of Energy Trust. Neither Energy Trust nor the PMC will be responsible for lost documentation pertaining to this application, or any lost or misdirected mail. To be eligible for this Energy Trust incentive, Participant must be eligible to participate in the Program and must be installing the Measures in Oregon in (i) the electric service territory of Portland General Electric or Pacific Power or (ii) the natural gas territory of Northwest Natural Gas or Cascade Natural Gas. Final determination of eligibility rests solely with Energy Trust.

2. ELIGIBILITY: Existing Buildings program incentives are available to commercial, municipal and institutional customers located in an electric or natural gas utility territory served by Energy Trust. Program services and incentive offerings may vary by territory in Oregon, electric customers of Portland General Electric or Pacific Power are eligible to apply for incentives for qualifying electric energy-saving Measures, and natural gas customers of NW Natural (on qualifying rate schedules) or Cascade Natural Gas are eligible to apply for incentives for qualifying natural gas energy-saving Measures. Final determination of eligibility rests solely with Energy Trust.

3. INCENTIVES: Funds for incentives are limited and subject to budget availability. Details of the Program, including incentive levels, are subject to change. Energy Trust incentives towards qualifying custom non-lighting Measures will not exceed the lesser of 50% of the incremental project cost or 25¢/annual kWh and \$2.00/annual therm saved. Energy Trust incentives will never exceed the documented total final project costs or a maximum of \$499,999. The Program also limits the total amount of incentives that any Participant can receive on a per site, per year basis to a maximum total of \$500,000.

4. MEASURE INSTALLATION: Participant represents that it has the right to perform the Measures at the site identified and that any necessary consents have been obtained. Participant is solely responsible for implementing the Measures and for ensuring that it is in compliance with all federal, state and local safety, building, and environmental laws, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants, restrictions and any manufacturer instructions.

5. VERIFICATION: Reviews of technical work before, during, and after Measure installation are a critical part of Energy Trust's verification process. A site visit may be required to further analyze proposed Measures, evaluate calculations, assumptions, facility descriptions, and savings estimates. Participant agrees to provide Energy Trust and its representatives with reasonable access to (i) the project site(s), and (ii) all technical documentation related to the Measures necessary to verify compliance with Program requirements and the accuracy of project documentation. Measures may be selected for a post-installation inspection and verification, and satisfactory completion of that inspection must occur before any incentive payment will be issued. Any inspection conducted by the Program is conducted for program purposes only and no warranty is implied.

Form 120C
Incentive Application - Custom
Existing Buildings



6. PAYMENT: For approved applications, incentives will be paid following (i) completion of the energy-saving Measure(s), (ii) completion of a satisfactory post-installation inspection (if required), (iii) submission of a completed **Form 140C: Completion Certification**, (iv) submission of all required Project Completion Documentation (see section 7 below), and (v) submission of an **IRS Form W-9 (Request for Taxpayer Identification Number and Certification)** for the payee. Please allow 60 to 90 days from Energy Trust's receipt of all information for delivery of payment. Failure to deliver all required documentation may result in a delay or withholding of payment. Participant agrees and acknowledges that its acceptance of any Energy Trust incentive funding for Measures identified in this application constitutes representation and warranty to Energy Trust that Participant needed and used such funding for the purpose of implementing the Measures as described herein.

7. PROJECT COMPLETION DOCUMENTATION: Energy Trust has the right to request, and Participant agrees to provide Energy Trust and its representatives with, all project completion documentation necessary for Energy Trust to determine whether certain measure(s) qualify for incentive funding and/or to calculate Participant's actual incentive amount. Project completion documentation must itemize the equipment purchased and/or work performed for each Measure(s) by site and may include without limitation the following: (1) sales slips, invoices, purchase orders, or contracts for equipment or services ordered, (2) size, type, make, and model or part number of equipment purchased and the date of the equipment purchase and itemized price paid, (3) a detailed description of installation or other labor charges for the Measures showing the date the work was performed, name of the worker, hours worked, Measure installed and labor rate. In addition, Participant agrees to inform Energy Trust of any external funding sources received by Participant that directly reduce all or a portion of the final project costs incurred by Participant for the energy-efficiency Measures specified in this application (for example, state/federal funding, grants, discounts, rebates, incentives or other similar types of consideration (the "GrantFunds")). While Energy Trust encourages leverage of its incentive funding to reduce Participant's final project costs for the purchase and installation of such equipment, the amount of Energy Trust incentive funding may never exceed an amount equal to final project costs minus Grant Funds received by Participant for the project. Energy Trust reserves the right to request additional project documentation for review, as it deems necessary, prior to payment of incentives to ensure accountability for Program funds. Participant agrees to retain, and Energy Trust reserves the right to review, any project completion documentation related to the Measures for a period of 18 months following payment of any incentive funds.

8. INFORMATION ABOUT SELF-DIRECTION: Energy Trust receives and invests some of the funds generated by the public purpose charge collected from the customers of PGE and Pacific Power. Although payment of the public purpose charge is generally mandatory, certain large customers - those that use more than one average megawatt of electricity (8,760,000 kilowatt hours) at one site in one year - may "self direct" their conservation public purpose charge payments through the Oregon Department of Energy (ODOE) to fund certified energy conservation expenditures at their own facilities. Self-direction is optional, and over time, a customer may change its self-direct status. Self-direction status affects eligibility for Energy Trust services and incentives. Energy Trust's self-direct policy and a copy of our **Frequently Asked Questions Regarding Self Direction** can be found on our website at www.energytrust.org.

9. IMPACT OF SELF-DIRECTION: If the conservation public purpose charge for the installation site account number(s) associated with the Measures may be self-directed, then Participant (i) shall not apply for or accept any self-direct credits for the Measures and (ii) must choose between the following two options to determine eligibility for Energy Trust incentives:

OPTION 1: Participant may receive the full Energy Trust incentive for the Measure and represents and warrants to Energy Trust that the conservation portion of its public purpose charge for the account number(s) for such site will not be self-directed for a period of 36 months from the Energy Trust incentive payment date. If Participant receives incentive funding pursuant to this OPTION 1 and is determined to breach this requirement during the 36 month time period, then Participant will immediately repay to Energy Trust a pro rated refund amount according to the following formula:

Prorated Refund Amount = $0.5 \times A \times B$, where,

A = total amount of Energy Trust incentives paid

B = 36 minus the number of months elapsed since Energy Trust incentive payment date, divided by 36; OR

OPTION 2: Participant may receive half the Energy Trust incentive for the Measures and continue self-directing its conservation public purpose charge.

10. TAX LIABILITY: Energy Trust and its representatives are not responsible for any tax liability which may be imposed on the Participant as a result of any incentive payment. Energy Trust is not providing tax advice, and any communication by Energy Trust is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

11. NO ENDORSEMENT: Energy Trust and its representatives do not endorse any particular manufacturer, contractor or product in promoting the Program. The fact that the names of particular manufacturers, contractors, products or systems may appear on this application does not constitute an endorsement. Manufacturers, contractors, products or systems not mentioned are not implied to be unsuitable or defective in any way.

12. ACCESS AND EVALUATION: Energy Trust and its representatives may request access to the property where the measures are installed for the purpose of reviewing and evaluating Participant's Measures installation project during and after completion. Participant agrees to provide reasonable access to the property for the purpose described herein.

Form 120C
Incentive Application - Custom
Existing Buildings



13. INFORMATION RELEASE: Participant agrees that Energy Trust may include Participant's name, city or county business, Energy Trust services, incentives and resulting energy-savings in reports or other documentation submitted to the Energy Trust Board of Directors, the Oregon Public Utility Commission, Oregon Department of Energy, Oregon Housing & Community Services, or the Oregon Legislature. Energy Trust will treat all other information gathered in evaluations as confidential and report it only in the aggregate.

14. DISCLAIMER / NO LIABILITY: Participant understands and agrees that while Energy Trust may provide incentive funding to Participant, neither Energy Trust nor the PMC are supervising any work performed for Participant and neither are responsible in any way for proper completion of that work or proper performance of any equipment purchased. NEITHER ENERGY TRUST NOR ITS REPRESENTATIVES MAKE ANY WARRANTIES WHETHER EXPRESS OR IMPLIED WITH RESPECT TO ANY EQUIPMENT PURCHASED OR INSTALLED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Participant shall independently evaluate any information provided by Energy Trust or its representatives related to the Measures. Energy Trust simply provides incentive funding to assist with the implementation of energy-efficiency measures. Participant assumes the risk of any loss or damage(s) that Participant may suffer in connection with the installation of the Measures. Energy Trust and PMC do not guarantee any particular energy-savings results by approval of this application, or by any other of their respective actions. ENERGY TRUST'S LIABILITY IS LIMITED TO THE AMOUNT OF ANY INCENTIVE OWED FOR THE MEASURE(S) PURSUANT TO THIS AGREEMENT. IN NO EVENT WILL ENERGY TRUST OR ITS REPRESENTATIVES BE LIABLE, PURSUANT TO THIS AGREEMENT, TO PARTICIPANT OR ANY THIRD PARTY FOR ANY DAMAGES, WHETHER CHARACTERIZED AS GENERAL, SPECIAL, DIRECT, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR OTHERWISE.

15. HAZARDOUS MATERIALS: Energy Trust and its representatives shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials of any kind in connection with Participant's site or facility, including without limitation asbestos, asbestos products, PCBs, or other toxic substances.

16. GOVERNING LAW: This agreement shall be exclusively governed by and construed in accordance with the laws of the state of Oregon, without regard to any conflicts of laws rules thereof.

Self Direction Status *(This section is applicable ONLY if Participant is eligible to self-direct portions of their CONSERVATION public purpose charge.)*

Participant's self-direction status determines how much incentive funding Energy Trust will initially provide towards the identified Measure(s) and whether or not the incentive funds will be subject to certain self-direction repayment requirements. Energy Trust has based its determination of Participant's self-direct status and the estimated incentive amounts herein on the information it has received from Participant. According to our records, Participant has selected (see sections 8 and 9 of the terms and conditions)

☐ OPTION 1 or ☐ OPTION 2, and the estimated incentives set forth herein have been calculated in accordance with such selection.

By signing this agreement, you represent that Participant approves the OPTION selected above and fully understands and agrees to the terms and conditions, including but not limited to the repayment requirements, set forth in this agreement. In addition, Participant will notify Energy Trust immediately if a decision is made to change self-direction status during the incentive reservation period and understands that updated or additional paperwork will be required.

DEADLINE FOR PARTICIPANT TO RETURN THIS APPLICATION. Details of this Program, including incentives, are subject to change. To reserve the estimated incentive amounts for the Measures identified above, Participant must complete, sign and return this application within 60 days from the date of the Program's Technical Manager signature. Applications will be processed in accordance with Program requirements and Energy Trust incentive funding is subject to budget availability.

Signature

By my signature below, I represent and warrant to Energy Trust that (i) I am authorized to sign this agreement on behalf of Participant, (ii) I have completed this **Form 120C** completely, truthfully and accurately to the best of my knowledge, and (iii) Participant has read, understands and agrees to the terms and conditions of this agreement.

Participant <i>(printed name)</i>	Signature	Date
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FOR MORE INFORMATION: Call the Existing Buildings program at 1.866.605.1676.

Original signed documents transmitted via fax or as a scanned attachment via electronic mail shall be the same as delivery of the original signed document. At the request of Energy Trust, Participant shall confirm documents with a facsimile or a scanned signature by providing an original document.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 8, 2015

Order ____ Ordinance ____ Resolution XX Motion ____ Information ____
No. No. No. 2015-3224

SUBJECT: A resolution authorizing the acquisition of Certain Real Property for the installation of sidewalk along the property at tax lot 3217CD 05300

**Contact Person (Preparer) for this Motion: Jason Wuertz, P.E., Project Manager
Dept.: Engineering Services Department
File No.:**

RECOMMENDATION:

Adopt Resolution No. 2015-3224, authorizing the acquisition of Certain Real Property for the installation of sidewalk along the property at tax lot 3217CD 05300.

EXECUTIVE SUMMARY:

Villa Road currently has continuous sidewalks on the west side of the street from HWY 99 to Orchard Drive, with the exception of an approximately 85' stretch along tax lot 3217CD 05300 (517 Villa Road). Acquisition of right-of-way along this property will allow for continuous sidewalks, which will provide for a safe pedestrian walkway for the public use. The location of the property is shown in the vicinity map below.



VICINITY MAP
N.T.S.

The City has hired a right-of-way consultant to begin negotiations with the property owner for the purchase of the necessary right-of-way needed to install the sidewalk. An appraisal has been completed and the next step is to begin the negotiations. Before proceeding with the next stage of negotiations, the Council

is required to authorize this resolution per ORS 35.235. The desired outcome would be to reach an agreement through negotiations, but if necessary, condemnation would be pursued.

FISCAL IMPACT:

The purchase of the ROW will be funded through account number 02-5112-610000 and will require a supplemental budget. The appraised value of the acquisition is \$8,100.00

STRATEGIC ASSESSMENT:

Acquisition of ROW along tax lot 3217CD 05300 will allow for the installation of sidewalk along the property. This will provide for a complete and continuous public pedestrian walkway from HWY 99 to Orchard Drive along the west side of Villa Road.



RESOLUTION No. 2015-3224

**A RESOLUTION AUTHORIZING THE ACQUISITION OF CERTAIN REAL
PROPERTY FOR THE INSTALLATION OF SIDEWALK ALONG THE
PROPERTY AT TAX LOT 3217CD 05300**

RECITALS:

1. Under the laws of the State of Oregon, the City of Newberg is authorized and empowered to locate, acquire, construct, reconstruct, alter, enlarge, renew, replace, operate and maintain such roadway systems and facilities as are necessary and proper for the City in the judgment of its City Council.
2. Under the laws of the State of Oregon, the City of Newberg may acquire by purchase, gift, condemnation proceedings, or otherwise, such real and personal property, interests in property and rights-of-way, either within or without the limits of the City as are necessary or proper to exercise its powers in the judgment of the City Council.
3. It is necessary and in the public interest to acquire right-of-way along tax lot 3217CD 05300 (517 Villa Road, the "Property") for the purpose of constructing, maintaining, repairing, and reconstructing sidewalk in the City of Newberg (the "Project").
4. The Project has been planned and located in a manner that is most compatible with the greatest public good and the least private injury.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The Council finds that it is necessary, required and in the public interest for the Project, that the interests in real property at tax lot 3217CD 05300, be acquired.
2. The City of Newberg staff is directed to begin negotiations to acquire the Property interests in accordance with all applicable laws, rules, and regulations governing such acquisition. Any agreement to purchase property is subject to City Council approval.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: September 9, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 8th day of September, 2015.

Sue Ryan, City Recorder

ATTEST by the Mayor this 10th day of September, 2015.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 8, 2015

Order ____ Ordinance XX Resolution ____ Motion ____ 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:

Adopt Ordinance No. 2015-2782, amending the Newberg Development Code regarding temporary and portable signs to create a sign permit program for portable signs that would allow additional signs on private property, clarify other sections of the sign code, and allow additional portable signs in the right-of-way outside of the downtown area.

EXECUTIVE SUMMARY:

A. SUMMARY: The proposed Development Code amendments would do the following:

- Create a portable sign permit program that will allow additional portable signs with a coordinated appearance on private property in the C-2, C3, and Institutional zones.
- Add new code language to address the use of pennants, streamers, and inflatable objects, to allow some signs on umbrellas, and to clarify the use of temporary signs during events.
- Add new code language allowing some portable signs in the public right-of-way outside of the downtown (C-3) area, and clarifying where portable signs are allowed on downtown sidewalks.
- Makes several minor changes to code language regarding temporary and portable signs to clarify the intent of the code.

B. BACKGROUND:

- On October 7, 2013, the City Council adopted Resolution No. 2013-3080, establishing a Temporary and Portable Sign Ad-Hoc Committee. The committee's charge was: "The committee will make a determination as to what, if any, changes to the current Development Code regarding temporary and portable signs may be desirable. If the committee determines changes may be warranted, the committee is to draft recommended Development Code amendments for consideration of adoption by the city council. Such recommended changes shall meet two criteria: improve the likelihood the intended message will reach its target audience; while at the same time, meet the spirit and intent of the purpose of the sign regulations as stated in Section 15.435.010 of the Newberg Development Code."
- The purpose of the city's sign regulations per the Newberg Development Code is:
15.435.010 Purpose.
A. The citizens of Newberg desire a clean, attractive, economically vibrant, and safe community. Well-planned and constructed signs can contribute to the community's success by directing and informing the public about commercial and other activities, and by creating attractive commercial

and other neighborhoods. On the other hand, unregulated signage can create clutter, distractions, and hazards.

- The committee met many times to discuss potential code changes. They met with local business owners, and toured the city to see how signs were being used “on the ground.” They developed new code language for a sign permit program for temporary signs, and recommended several other changes to clarify the sign code and make it more flexible.
- On July 21, 2014, the City Council considered the recommendations of the Temporary and Portable Sign Ad-Hoc Committee. The Council accepted the recommendations with a few minor comments, and initiated a development code amendment process through Resolution No. 2014-3161.
- On November 13, 2014, the Planning Commission held a legislative hearing to consider the development code amendment and take public testimony. The Commission continued the hearing on December 11, 2014, took public testimony, deliberated, and continued the hearing to January 8, 2015. On January 8, 2015, the Commission took public testimony, deliberated, and continued the hearing to February 12, 2015.
- The Planning Commission generally agreed with the Ad-Hoc Committee’s recommendations, and was interested in making additional clarifications to the sign code language. The Commission was also interested in changing the code so that properties outside of the downtown area would be allowed to place temporary signs in the right-of-way. On February 12, 2015, the Planning Commission took public testimony, deliberated, and adopted Resolution No. 2015-305, which recommended that the City Council adopt the proposed amendments to the Development Code.
- The Oregon Department of Transportation (ODOT) and Yamhill County had not had a chance to comment on the proposal to allow portable signs in the right-of-way outside of downtown, so staff forwarded the Planning Commission Resolution No. 2015-305 to those agencies for comment. Most of the public right-of-way in Newberg is under city jurisdiction, but some streets along the edges of the city are still under Yamhill County jurisdiction. State Highways 99W, 219 and 240 within the city are under ODOT’s jurisdiction, so ODOT controls what is allowed within the right-of-way. Yamhill County replied that County policy does not allow private signs in the right-of-way, although their code enforcement focuses on signs that create safety problems. ODOT replied that they do not permit private signs in the right-of-way; however, there was an exception for some streets in the downtown area which are “resoluted” highways, where the City controls the right-of-way behind the curb (the sidewalks) and ODOT controls from curb to curb.
- Based on the ODOT and Yamhill County comments, staff brought the sign code amendment back to the Planning Commission for discussion. The Planning Commission reopened the public hearing on August 13, 2015, took additional public testimony, and adopted Resolution No. 2015-308, which revised the code amendment to reflect the agency and public comments, and replaced Resolution No. 2015-305.

C. PROCESS: A development code amendment is a Type IV application and follows the procedures in Newberg Development Code 15.100.060. Important dates related to this application are as follows:

1. 7/21/14: The Newberg City Council initiated the Development Code amendment.

2. 11/13/14: After proper notice, the Planning Commission held a legislative hearing to consider the item, took public comment, and continued the hearing to December 11, 2014.
3. 12/11/14: The Planning Commission reopened the hearing, took public testimony, began deliberations, and continued the hearing to January 8, 2015.
4. 1/8/15: The Planning Commission reopened the hearing, took public testimony, resumed deliberations, and continued the hearing to February 12, 2015.
5. 2/12/15: The Planning Commission reopened the hearing, took public testimony, resumed deliberations, and approved Resolution No. 2015-305.
6. 5/4/15: After proper notice, the City Council opened the hearing on the sign code amendment, and continued it without discussion to July 6, 2015 to allow the Planning Commission and staff additional time to coordinate with ODOT and Yamhill County.
7. 7/6/15: Staff had not yet received final comments from ODOT, so the City Council continued the hearing to September 8, 2015.
8. 8/13/15: The Planning Commission reopened their public hearing to consider new information, and adopted Resolution No. 2015-308. This resolution replaced Resolution No. 2015-305, and recommended that the City Council adopt amendments to the Newberg Development Code regarding signs.
9. 9/8/15: The City Council will hold a hearing on the sign code amendment and consider adopting Ordinance No. 2015-2782.

D. PUBLIC COMMENTS/ISSUES: Many public comments were received during the Planning Commission hearings. The main issues are addressed below, and the full comments are included in Attachment 2.

1. **Holidays and flags:** The Planning Commission recommended a list of holidays on which an unlimited number of flags would be permitted.
2. **Umbrellas:** The Planning Commission recommended allowing some signs on umbrellas without a permit (the lowest 12 inches of the umbrella, measured from the bottom edge).
3. **Temporary signs during events:** The Planning Commission recommended new code language to: clarify the use of pennants, streamers and inflatable objects; clarify the number of signs allowed during events; and clarify when notice to the city of an event was required.

4. **On private property - Portable sign permit program:** The Planning Commission agreed with the proposal from the Ad Hoc Committee, and recommended code language to create a permit program for portable signs on private property. Current rules limit portable signs to one per frontage, without a permit. The sign permit program would allow additional portable signs on private property if they met certain standards:
 - a. The property owner must obtain an annual permit for the signs, and must maintain the signs in good condition.
 - b. Must meet the size and number limits in the sign permit program.
 - c. The portable signs approved under the portable sign permit must have a coordinated appearance (Signs must meet three of the following five criteria: similar size, colors, shape, materials, and/or font).
5. **Portable signs in the public right-of-way:** The Planning Commission was interested in allowing portable signs in the right-of-way outside of the downtown area, and clarifying the requirements for portable signs on downtown sidewalks.

Yamhill County comments: Yamhill County does not allow private signs in the public right-of-way, although their code enforcement focuses on signs that create safety hazards.

ODOT comments: ODOT does not allow private signs in the public right-of-way, and recommended that the following code language be included:

Temporary and/or portable signs for other than traffic control and motorist advisories are not permitted within state highway right-of-way administered by the Oregon Department of Transportation.

ODOT did some additional research on the right-of-way in the Newberg downtown area, and found that there were a few sections of “resoluted” highway downtown where ODOT only manages the right-of-way from curb to curb (a resoluted highway is a State highway on city streets). The city manages the sidewalks behind the curb on these sections of “resoluted” highway, and can allow portable signs on these sidewalks.

(see map on next page)

ODOT ROW map – downtown area. Blue lines show the resolved highway where the city can allow portable signs on the sidewalks. Blue lines extend on First Street from Harrison St. to River St., on Main St. from First St. to Illinois St., and on College St. from First St. to Vermilion Street. Portable signs are prohibited by ODOT on Hancock Street sidewalks, except where College Street and Main Street intersect Hancock. Portable signs are prohibited in all ODOT right-of-way outside of the downtown area.



Based on the public comments and agency comments, the Planning Commission recommended changing the development code to:

- i. Clarify where portable signs could be placed on the sidewalk downtown (in order to ensure that the sidewalk remained usable for pedestrians and met ADA requirements), and to require that the person placing the sign on the sidewalk obtain written approval from the adjacent property owner (if they are placing the sign in front of someone else's property).
- ii. The Planning Commission kept the code requirement that the portable signs must be taken in when the business being advertised is closed for the day. Their concern was that signs left out overnight would create tripping hazards on the sidewalk. The primary purpose of the sidewalk is for pedestrian travel.
- iii. The Planning Commission did not add any requirements for the code enforcement officer to notify a sign owner before confiscating it. They believed the code enforcement officer needed to have some discretion on when to act on signs in the right of way.
- iv. The Planning Commission incorporated the ODOT comments above into the recommended code language for portable signs on downtown sidewalks

- v. The Planning Commission recommended adding new code language to allow portable signs in the public right-of-way outside of the downtown area, with a clarification based on Yamhill County and ODOT regulations.

FISCAL IMPACT: No fiscal impact is expected.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

Signs are necessary for business vitality and visibility, and provide useful information for customers. Unregulated signs can lead to visual clutter, and have a negative impact on the visual character of the community. The Planning Commission has attempted to balance those goals, and revise the development code to protect the economic vitality and visual appearance of the community.

ATTACHMENTS:

Ordinance No. 2015-2782 with

Exhibit “A”: Proposed Development Code Text Amendment

Exhibit “B”: Findings

1. Planning Commission Resolution No. 2015-308
2. Public Comments/Correspondence Received
3. City Council Resolution No. 2014-3161, initiating the code amendment
4. Report from Temporary and Portable Sign Ad-Hoc committee



ORDINANCE No. 2015-2782

AN ORDINANCE AMENDING THE NEWBERG DEVELOPMENT CODE REGARDING TEMPORARY AND PORTABLE SIGNS

RECITALS:

1. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding temporary and portable signs on July 21, 2014, under City Council Resolution No. 2014-3161.
2. After proper notice, the Newberg Planning Commission held a hearing on November 13, 2014, to consider the amendment. The Commission considered testimony and continued the public hearing to their next scheduled meeting on December 11, 2014.
3. On December 11, 2014, the Planning Commission considered additional testimony, deliberated, and continued the hearing to January 8, 2015.
4. On January 8, 2015, the Planning Commission considered additional testimony, deliberated, and continued the hearing to February 12, 2015.
5. On February 12, 2015, the Planning Commission considered additional testimony, deliberated, and approved Planning Commission Resolution No. 2015-305.
6. On May 4, 2015, after proper notice, the City Council opened the hearing on the sign code amendment, and continued it without discussion to July 6, 2015, to allow the Planning Commission and staff additional time to coordinate with ODOT and Yamhill County.
7. On July 6, 2015, the City Council continued the hearing to September 8, 2015, to allow additional time for coordination with ODOT and Yamhill County.
8. On August 13, 2015, after proper notice, the Planning Commission reopened their public hearing to consider new information, and adopted Resolution No. 2015-308. This resolution replaced Resolution No. 2015-305, and recommended that the City Council adopt amendments to the Newberg Development Code regarding temporary and portable signs.
9. On September 8, 2015, the Newberg City Council held a hearing on the proposed sign code amendment, considered testimony, and deliberated.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. The Council finds that amending the regulations for temporary and portable signs would be in the best interests of the city. The Council adopts the amendments to the Newberg Development Code as shown in Exhibit "A". Exhibit "A" is hereby adopted and by this reference incorporated.

2. The findings shown in Exhibit “B” are hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this ordinance is: October 8th, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 8th day of September, 2015, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Sue Ryan, City Recorder

ATTEST by the Mayor this 10th day of September, 2015.

Bob Andrews, Mayor

List of Exhibits:

Exhibit “A”: Development Code Text Amendments

Exhibit “B”: Findings

**Exhibit “A” to Ordinance 2015-2782
Development Code Amendments –File DCA-14-001
Temporary and Portable Signs**

1. The Newberg Development Code shall be amended as follows:

Note: Existing text is shown in regular font.

Added text is shown in double-underline

Deleted text is shown in ~~strikethrough~~.

15.05.030 Definitions.

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

“Building face” means an exterior wall of a building that generally faces one direction and that is visible from the public right-of-way. A building face is broken by a change in building direction of 60 degrees or more, except for minor extensions or indentations that are shorter than 50 percent of the building frontage (see Appendix A, Figure 15).

“Building frontage” means the longest horizontal distance between lines perpendicular to a building face (see Appendix A, Figure 15).

“Flag” means fabric that is attached to a pole on one end only that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.

“Flag display” means one or more flags attached to a permanently affixed single pole.

“Readerboard” means a portable sign with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. “Readerboard” does not include animated signs, nor does it include signs where less than 20 percent of the sign area can be so changed or rearranged.

“Sign” means any device, fixture, placard, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. “Sign” includes banners, flags, balloons with graphics, letters, or advertising, and murals.

“Sign, animated” means a sign that has a display that changes more than once in any 10-minute period.

“Sign area” means the area of a sign which is computed by means of the smallest square, circle, rectangle, triangle, or combination of the smallest square, circle, rectangle, or triangle that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets the requirements of this code and is clearly incidental to the display itself. The sign area for a sign with more than one face shall be computed by adding the area of all sign faces visible from any one point. When two sign faces are placed back to back or at an angle of less than 45 degrees to one another so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than

42 inches apart, the sign area shall be computed by the measurement of the largest face (see Appendix A, Figure 16).

“Sign, attached” means any sign attached to any part of a building, as contrasted to a freestanding sign. Attached signs are of two types:

1. Minor Attached. A sign not to exceed six square feet in area (three square feet in residential zones) that does not extend above the roof line of the building it is attached to.
2. Major Attached. All other attached signs.

“Sign, freestanding” means any sign supported by structures or supports that are anchored in the ground and that are independent from any other building or structure. Freestanding signs are of two types:

1. Minor Freestanding. A freestanding sign that is less than or equal to six square feet in area (three square feet in residential zones) and three feet in height.
2. Major Freestanding. All other freestanding signs.

“Sign, portable” means any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to: signs designed to be transported by means of wheels; signs connected to A- or T-frames; menu and sandwich board signs; umbrellas, balloons, flags, or banners containing signs; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said sign is permanently affixed to the vehicle and said vehicle is licensed for movement on public streets.

“Sign, public” means any sign that is placed within public right-of-way by or under direction of a governmental agency.

“Sign, temporary” means a portable sign that is limited by law to placement for a specified period of time.

15.435.010 Purpose.

A. The citizens of Newberg desire a clean, attractive, economically vibrant, and safe community. Well-planned and constructed signs can contribute to the community’s success by directing and informing the public about commercial and other activities, and by creating attractive commercial and other neighborhoods. On the other hand, unregulated signage can create clutter, distractions, and hazards.

B. These regulations are designed:

1. To improve, maintain and preserve Newberg as a pleasing environment so as to improve the quality of life of all residents.
2. To enhance the attractiveness of Newberg as a place to conduct business.
3. To enable the identification of places of residence and business.
4. To allow freedom of expression.
5. To reduce distractions and obstructions from signs which would adversely affect safety.
6. To reduce the hazards from improperly placed or constructed signs. [Ord. 2499, 11-2-98. Code 2001 § 151.590.]

15.435.020 Applicability and exemptions.

A. All signs placed or maintained anywhere within the city shall comply with the standards of this chapter, with the exception of the following:

1. Public signs.
2. Signs that are required to be placed by law and that are no more than 50 percent larger than the minimum size required by law or, if there is no minimum size specified, signs with lettering height no more than four inches.
3. Signs painted on or attached to windows that do not cover more than 50 percent of the surface of that window.
4. Signs located entirely within a building and not on a window.
5. Signs not legible from the public right-of-way.

B. If any of the signs listed above require permits under the current edition of the Oregon Structural Specialty Code, the sign shall be placed only following issuance of such permit.

C. Nothing in this chapter shall be construed to allow placement of a sign on a property without the authority of the property owner. [Ord. 2499, 11-2-98. Code 2001 § 151.591.]

15.435.030 Permit required.

A. Except as follows, no person or entity shall place any sign within the city without first obtaining a permit from the director.

B. The following do not require sign permits, but must otherwise comply with the standards of this chapter:

1. Minor freestanding signs.
2. Minor attached signs.
3. Temporary signs.
4. Portable signs.
5. Flag display (one allowed on each street frontage)

~~65.~~ If any of the signs listed above require permits under the current edition of the Oregon Structural Specialty Code, the sign shall be placed only following the issuance of such permit. [Ord. 2499, 11-2-98. Code 2001 § 151.592.]

15.435.040 General requirements – All signs.

A. All signs shall comply with the standards contained in the current edition of the Oregon Structural Specialty Code. If the standards of that code and this development code conflict, this development code shall prevail. All signs shall be kept in repair and in a proper state of preservation as required under the current edition of the Oregon Structural Specialty Code.

B. No sign shall have bright or flashing lights shining on a public way that blind or impair the vision of drivers. No sign shall be constructed such that it may be confused with any traffic sign, signal or device.

C. In the C-3 zone, animated signs are prohibited.

D. All signs shall comply with the vision clearance standards of NMC 15.410.060.

E. Signs located in the airport overlay subdistrict shall comply with the height and visual interference restrictions of that district. [Ord. 2731 § 3, 10-18-10; Ord. 2565, 4-1-02; Ord. 2561, 4-1-02; Ord. 2499, 11-2-98. Code 2001 § 151.593.]

15.435.080 Minor attached signs, ~~and~~ awning signage, and umbrella signage.

A. Minor Attached Signs.

1. Spacing. No two minor attached signs on one building that are both visible from any one point shall be closer than 25 feet.
2. Size.
 - a. Residential Zones. Minor attached signs shall not exceed three square feet in area.
 - b. Other Zones. Minor attached signs shall not exceed six square feet in area.
3. Height. Minor attached signs shall not extend above the roof line of the building they are attached to.
4. Projections.
 - A. C-3 Zone. Minor attached signs may project no more than three feet into a public right-of-way, but no closer than two feet from the curb line. The lower edge of any minor attached sign shall be at least eight feet above ground level. This requirement supersedes the relevant sign standards in the current edition of the Oregon Structural Specialty Code.
 - b. Other Zones. The same projection is allowed as for major attached signs, NMC 15.435.070.

B. Awning Signage. Awnings are encouraged along the frontage of buildings in the C-3 district.

1. C-3 Zone. Back-lit translucent awnings are not allowed. Lettering may appear on curved surfaces, but shall be limited to the lowest 12 inches of the awning (measured vertically from the lowest edge). Freestanding letters mounted on top of the front vertical surface are also allowed, though they shall not exceed eight inches in height.
 - a. Other minor attached signs may be attached to or suspended from an awning or canopy, provided they are less than six square feet in size.
 - b. The lower edge of any awning shall be at least eight feet above ground level. This requirement supersedes the relevant sign standards in the Uniform Sign Code.
 - c. Signage is not allowed on any awning surfaces that are not specifically permitted in this section.
2. Other Zones. Awning signs in other zones shall be regulated as either minor or major attached signs.

C. Umbrella Signage. Signs on umbrellas are allowed without a sign permit but are limited to the lowest 12 inches of the umbrella (measured along the umbrella surface from the lowest edge). Umbrella signs shall comply with all other municipal code requirements.

15.435.090 Portable signs.

- A. Number. Not more than one portable sign may be located on any one street frontage, except temporary signs allowed per NMC 15.435.100.
- B. Size.
1. Residential Zones.
 - a. Residential Uses. One portable sign not to exceed six square feet.
 - b. All Other Permitted Uses. One portable sign not to exceed six square feet if located in the front yard, or 16 square feet if located elsewhere on the property.
 2. Other Zones. The one portable sign may not exceed 12 square feet if located in the front yard, or 40 square feet if located elsewhere on the property.
- C. Design. No portable sign shall be permanently affixed to any structure or the ground. No portable sign shall be attached to a tree, ~~or~~ utility pole, traffic sign, street sign, or any publicly-owned pole, post, wire or cable, except as authorized by the city. All signs shall be designed to be removed quickly. No portable sign shall be animated or internally illuminated. No readerboard shall be used as a portable sign, except as a temporary sign as permitted NMC 15.435.100.
- D. Location. No portable sign shall be located within the public right-of-way except as allowed under NMC 15.435.110.
- E. Height. The height of a portable sign shall not exceed the maximum height of buildings in that zone. [Ord. 2499, 11-2-98. Code 2001 § 151.598.]

15.435.100 Temporary signs for events.

In addition to the portable signs otherwise permitted in this code, a lot may contain temporary signs in excess of the number and size allowed by NMC 15.435.090 during events as listed below. Pennants, streamers, and inflatable objects may be used during these events.

A. Grand Opening Event. A grand opening is an event of up to 30 days in duration within 30 days of issuance of a certificate of occupancy for a new or remodeled structure, or within 30 days of change of business or ownership. No lot may have more than one grand opening event per calendar year. The applicant shall notify the city in writing of the beginning and ending dates prior to the grand opening event. If there are no freestanding signs on a frontage after the grand opening event, one of the temporary signs may remain on the property for the 60 days immediately after the end of the grand opening event. A temporary electronic message center may be used during a grand opening event. An unlimited number of temporary signs are allowed during a grand opening event.

B. Election Event. An election event begins 90 days prior to and ends 14 days after any public election. During this event a lot may contain ~~up to~~ no more than two additional temporary signs, not to exceed 12 square feet in total area for both signs. These signs shall not be located in the public right-of-way.

C. Other Events. A lot may have two other events per calendar year. The events may not be more than eight consecutive days in duration, nor less than 30 days apart. A temporary electronic message center may be used during the event. An unlimited number of temporary signs are allowed during the event. The applicant shall notify the city in writing of the beginning and ending dates prior to the Other Event.

D. Flags. ~~Displays. One flag display is permitted on each street frontage.~~ An unlimited number of displays is ~~is~~ flags are permitted on any legal holiday or Newberg city council designated festival Memorial Day, Presidents Day, Independence Day, Veterans Day, Labor Day, Flag Day, Peace Officers Day, the Friday of the Camellia Festival, the Friday of the Old Fashioned Festival, or on any festival day designated by the Newberg City Council.

15.435.105 Sign Permit Program for Portable Signs on private property

A. Purpose: The purpose of the sign permit program is to allow additional temporary and portable signage for properties within the C-2, C-3, and Institutional zones than is otherwise allowed by the municipal code.

The goal of the permit program is to allow additional signage on private property with a coordinated appearance.

B. Process: Applications for a permit under the sign permit program will be reviewed under a Type I process. Signage allowed under the permit must be well-maintained both physically and operationally. Signage under the permit that is found to not be well-maintained may result in the permit being revoked. Permits may be obtained for up to one year. Permits may be renewed, as long as they continue to meet the permit requirements. Only a property owner or their designee is allowed to obtain a permit under the sign permit program. A property owner is allowed one sign permit per property.

C. Criteria: The following criteria must be met for permit approval under the sign permit program:

1. Number of signs per property: 1 per 100 feet of street frontage in C-2 zone; 1 per 15 feet of street frontage, with a maximum of 4 signs total within the C-3 zone; and, 1 per 100 feet of street frontage within the Institutional zone. If more than one business is located on a property, at least one sign per business is allowed, as long as the business occupies a discrete space and possesses its own business license.
2. Size and location of signs: Maximum total signage for all temporary and portable signs under a sign permit shall be 1 square foot per 1 foot of street frontage. Maximum size allowed for any specific sign will be based on the location of the sign, up to a maximum of 40 square feet. The farther the distance a sign is from the front property line, the greater size that will be allowed for a specific sign. Maximum size for signage within the first 10 feet from the property line is 10 square feet. For every additional 10 feet from the property line, the maximum square footage for a sign will be an additional 10 square feet larger. Example: if a sign is between the front property line and 10 feet from the property line, then maximum sign size is 10 square feet; if a sign is between 10 feet and 20 feet from the property line, then the maximum sign size is 20 square feet in size, and so on.
3. Coordinated appearance: Every sign approved under an individual sign permit must have a cohesive, coordinated appearance. Signs must meet three of the following five criteria: similar size, colors, shape, materials, and/or font.

15.435.110 Signs within the public right-of-way.

A. Public signs are ~~allowed~~ ~~permitted~~ in the public right-of-way as ~~allowed~~ ~~permitted~~ by the governmental agency responsible for the right-of-way.

B. Temporary and/or portable signs for other than traffic control and motorist advisories are not allowed within state highway right-of-way administered by the Oregon Department of Transportation except on resolute highways. In 2015, the resolute highways in Newberg were: On First Street from Harrison Street to River Street, on Main Street from First Street to Illinois Street, and on College Street from First Street to Vermilion Street. On a resolute highway the city manages the portion of the right-of-way behind the curb and can permit portable signs on the sidewalk. Portable and/or temporary signs are not allowed by ODOT on Hancock Street except within the College Street or Main Street rights-of-way. Portable and/or temporary signs are not allowed within county road right-of-way administered by Yamhill County.

C. B. For lots in the C-3 and C-4 zones, the one allowed portable sign per street frontage may be located, without permit, in the public right-of-way fronting that lot except as stated in 15.435.110B, provided it meets the following standards:

1. The sign may not be less than two feet nor more than four feet high. The sign must also conform to 15.410.060 if it is within the clear vision zone.
2. The sign may not be located within the vehicular path.
3. If located on a sidewalk, the sign must leave a clear access path ~~area~~ of at least five feet wide measured horizontally across the main part of the sidewalk and may not be located on an ADA wheelchair ramp.
4. If the sign is located adjacent to a striped on-street parking area, the sign must be located adjacent to the stripe.
5. The sign may not be located within three feet of a fire hydrant.
6. The sign owner must have the sign removed ~~be removed~~ during ~~nonbusiness~~ hours when the business being advertised is closed, or hours the adjoining property is uninhabited. In addition, signs must not be present between the hours of 2 AM and 5 AM.
7. The person placing the sign in the right of way must obtain written permission from the owner, or their designee, of the property abutting the right-of-way shall grant permission for any sign, other than a public sign, that is placed within that right-of-way fronting the property owner's lot. The written permission must be attached to the sign, and may be attached to the inside surface of an A-frame sign.
8. If more signs than are allowed by this code ~~are~~ ~~than one sign~~ is located in the right-of-way fronting one lot, all signs may be forfeited as per subsection ~~(F E)~~ of this section.
9. Portable and/or temporary signs are not allowed by ODOT on sidewalks along Hancock Street except within the College Street and Main Street rights-of-way.

~~C. For lots in other zones, one portable sign per street frontage may be allowed in the public right of way, provided:~~

- ~~1. The applicant first obtains a sign permit from the director approving the location of the sign. Approval is at the sole discretion of the director. The permit shall be affixed to the sign.~~
- ~~2. The standards of subsections (B)(1) through (B)(6) of this section are met.~~

D. For lots in other zones, two portable signs per street frontage may be allowed in the public right-of-way except as stated in 15.435.110B provided:

1. The standards of subsection C above shall be met with the exception of subsection (C)(6).

2. Signs may be displayed only during the following hours:

<u>Monday:</u>	<u>6am to 10pm</u>
<u>Tuesday:</u>	<u>6am to 10pm</u>
<u>Wednesday:</u>	<u>6am to 10pm</u>
<u>Thursday:</u>	<u>6am to Midnight</u>
<u>Friday:</u>	<u>24 hours</u>
<u>Saturday:</u>	<u>24 hours</u>
<u>Sunday:</u>	<u>Midnight to 10pm</u>

In addition, no sign may be displayed for more than 4 consecutive days.

3. Any sign installed or placed in the public right-of-way within these zones not in conformance with subsection (C)(7) above shall be forfeited to the owner of the property abutting the right-of-way and is subject to confiscation by said owner.

4. Portable and/or temporary signs are not allowed in the right-of-way along Highway 99W, Highway 240 or Highway 219 except as noted in B above.

~~E. D.~~ No other signs shall be placed within the public right-of-way except as specifically permitted by this code.

~~E E.~~ Any sign installed or placed in the public right-of-way, except in conformance with the requirements of this code, shall be forfeited to the ~~city public~~ and subject to confiscation ~~by city employees~~. In addition to other remedies hereunder, the city shall have the right to recover from the owner or person placing such a sign the full costs of removal and disposal of such sign. Identifying information on the sign shall be prima facie evidence that the individual or entity so identified is the violator. [Ord. 2706 § 1 (Exh. A(2)), 10-6-08; Ord. 2564, 4-15-02; Ord. 2499, 11-2-98. Code 2001 § 151.600.]

Penalty: See NMC 15.05.120.

**Exhibit “B” to Ordinance 2015-2782
Findings –File DCA-14-001
Temporary and Portable Signs**

Newberg Development Code § 15.435.010 PURPOSE.

(A) The citizens of Newberg desire a clean, attractive, economically vibrant, and safe community. Well planned and constructed signs can contribute to the community's success by directing and informing the public about commercial and other activities, and by creating attractive commercial and other neighborhoods. On the other hand, unregulated signage can create clutter, distractions, and hazards.

(B) These regulations are designed:

- (1) To improve, maintain and preserve Newberg as a pleasing environment so as to improve the quality of life of all residents.*
- (2) To enhance the attractiveness of Newberg as a place to conduct business.*
- (3) To enable the identification of places of residences and business.*
- (4) To allow the freedom of expression.*
- (5) To reduce distractions and obstructions from signs which would adversely affect safety.*
- (6) To reduce the hazards from improperly placed or constructed signs.*

Newberg Comprehensive Plan

H. THE ECONOMY

GOAL: *To develop a diverse and stable economic base.*

POLICIES:

1. General Policies

- p. The City shall strive to develop and promote a high quality of life in the community in order to attract and retain a diverse and highly skilled workforce.*
- q. The City shall foster an environment of business innovation so that the community may remain economically competitive.*

J. URBAN DESIGN

GOAL 1: *To maintain and improve the natural beauty and visual character of the City.*

POLICIES:

1. General Policies

- g. *Community appearance should continue to be a major concern and subject of a major effort in the area. Street tree planting, landscaping, sign regulations and building improvements contribute to community appearance and should continue to be a major design concern and improvement effort.*

3. Commercial Areas Policies

- c. *The City shall maintain sign regulations to help create a business environment that is attractive to customers and citizens. The City and appointed committees shall seek to eliminate signs that detract from the aesthetics of commercial areas and that violate adopted sign design regulations. (Ordinance 98-2499, November 2, 1998).*

Findings: As stated in the above policies, visual appearance and economic vitality are both very important to the community. Signs are by their nature designed to be visible and are therefore a significant part of the city's visual appearance. Sign regulations are necessary to control the visual impact of signs. Local businesses and institutions need sufficient signage to communicate with the public and help their businesses or organizations prosper. The proposed code regulations would allow more temporary and portable signs with a permit than is currently allowed, which would aid local businesses and institutions but could have a negative visual impact if unlimited. However, the criteria that must be met to obtain a permit will ensure that the signs allowed under the permit will meet the goals of the Newberg Development Code regarding the purpose of sign regulations. Also, the code changes regarding the use of other signage (pennants, streamers, inflatable objects, flags) clarify how and when these types of temporary signs are to be used. The proposed development code amendment therefore conforms to the Newberg Comprehensive Plan by balancing the goals of protecting the visual character of Newberg and fostering a strong economic environment.



PLANNING COMMISSION RESOLUTION 2015-308

A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL AMEND THE NEWBERG DEVELOPMENT CODE REGARDING THE USE OF TEMPORARY AND PORTABLE SIGNS

RECITALS

1. The Newberg City Council adopted Resolution 2014-3161 on July 21, 2014, which initiated amendments to the Newberg Development Code.
2. After proper notice, the Newberg Planning Commission held a hearing on November 13, 2014 to consider the amendment. The Commission considered testimony and continued the public hearing to their next scheduled meeting on December 11, 2014.
3. On December 11, 2014, the Planning Commission considered additional testimony, deliberated, and continued the hearing to January 8, 2015.
4. On January 8, 2015 the Planning Commission considered additional testimony, deliberated, and continued the hearing to February 12, 2015.
5. On February 12, 2015 the Planning Commission deliberated and adopted Resolution 2015-305, including a recommendation to allow portable signs in the right-of-way outside downtown.
6. Staff forwarded the resolution to Yamhill County and the Oregon Department of Transportation for comments, as both have jurisdiction over some rights-of-way within city limits. Both agencies commented.
7. After proper notice, the Newberg Planning Commission reopened the hearing to consider adopting Planning Commission Resolution 2015-308, which would replace Resolution 2015-305.

The Newberg Planning Commission resolves as follows:

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

2. The findings shown in Exhibit "B" are hereby adopted. Exhibit "B" is by this reference incorporated.

Adopted by the Newberg Planning Commission this 13th day of August, 2015.



Planning Commission Chair

ATTEST:



Planning Commission Secretary

List of Exhibits:

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

**Exhibit "A" to Planning Commission Resolution 2015-308
Development Code Amendments –File DCA-14-001
Temporary and Portable Signs**

Note: Existing text is shown in regular font.
Added text is shown in double-underline
Deleted text is shown in strikethrough.

15.05.030 Definitions.

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

"Building face" means an exterior wall of a building that generally faces one direction and that is visible from the public right-of-way. A building face is broken by a change in building direction of 60 degrees or more, except for minor extensions or indentations that are shorter than 50 percent of the building frontage (see Appendix A, Figure 15).

"Building frontage" means the longest horizontal distance between lines perpendicular to a building face (see Appendix A, Figure 15).

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"Sign area" means the area of a sign which is computed by means of the smallest square, circle, rectangle, triangle, or combination of the smallest square, circle, rectangle, or triangle that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets the requirements of this code and is clearly incidental to the display itself. The sign area for a sign with more than one face shall be computed by adding the area of all sign faces visible from any one point. When two sign faces are placed back to back or at an angle of less than 45 degrees to one another so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of

the same sign structure and are not more than 42 inches apart, the sign area shall be computed by the measurement of the largest face (see Appendix A, Figure 16).

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1. Minor Attached. A sign not to exceed six square feet in area (three square feet in residential zones) that does not extend above the roof line of the building it is attached to.
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5. To reduce distractions and obstructions from signs which would adversely affect safety.
6. To reduce the hazards from improperly placed or constructed signs. [Ord. 2499, 11-2-98. Code 2001 § 151.590.]

15.435.020 Applicability and exemptions.

A. All signs placed or maintained anywhere within the city shall comply with the standards of this chapter, with the exception of the following:

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2. Signs that are required to be placed by law and that are no more than 50 percent larger than the minimum size required by law or, if there is no minimum size specified, signs with lettering height no more than four inches.
3. Signs painted on or attached to windows that do not cover more than 50 percent of the surface of that window.
4. Signs located entirely within a building and not on a window.
5. Signs not legible from the public right-of-way.

B. If any of the signs listed above require permits under the current edition of the Oregon Structural Specialty Code, the sign shall be placed only following issuance of such permit.

C. Nothing in this chapter shall be construed to allow placement of a sign on a property without the authority of the property owner. [Ord. 2499, 11-2-98. Code 2001 § 151.591.]

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5. Flag display (one allowed on each street frontage)

65. If any of the signs listed above require permits under the current edition of the Oregon Structural Specialty Code, the sign shall be placed only following the issuance of such permit. [Ord. 2499, 11-2-98. Code 2001 § 151.592.]

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A. All signs shall comply with the standards contained in the current edition of the Oregon Structural Specialty Code. If the standards of that code and this development code conflict, this development code shall prevail. All signs shall be kept in repair and in a proper state of preservation as required under the current edition of the Oregon Structural Specialty Code.

B. No sign shall have bright or flashing lights shining on a public way that blind or impair the vision of drivers. No sign shall be constructed such that it may be confused with any traffic sign, signal or device.

C. In the C-3 zone, animated signs are prohibited.

D. All signs shall comply with the vision clearance standards of NMC 15.410.060.

E. Signs located in the airport overlay subdistrict shall comply with the height and visual interference restrictions of that district. [Ord. 2731 § 3, 10-18-10; Ord. 2565, 4-1-02; Ord. 2561, 4-1-02; Ord. 2499, 11-2-98. Code 2001 § 151.593.]

15.435.080 Minor attached signs, and awning signage, and umbrella signage.

A. Minor Attached Signs.

1. Spacing. No two minor attached signs on one building that are both visible from any one point shall be closer than 25 feet.
2. Size.
 - a. Residential Zones. Minor attached signs shall not exceed three square feet in area.
 - b. Other Zones. Minor attached signs shall not exceed six square feet in area.
3. Height. Minor attached signs shall not extend above the roof line of the building they are attached to.
4. Projections.
 - a. C-3 Zone. Minor attached signs may project no more than three feet into a public right-of-way, but no closer than two feet from the curb line. The lower edge of any minor attached sign shall be at least eight feet above ground level. This requirement supersedes the relevant sign standards in the current edition of the Oregon Structural Specialty Code.
 - b. Other Zones. The same projection is allowed as for major attached signs, NMC 15.435.070.

B. Awning Signage. Awnings are encouraged along the frontage of buildings in the C-3 district.

1. C-3 Zone. Back-lit translucent awnings are not allowed. Lettering may appear on curved surfaces, but shall be limited to the lowest 12 inches of the awning (measured vertically from the lowest edge). Freestanding letters mounted on top of the front vertical surface are also allowed, though they shall not exceed eight inches in height.
 - a. Other minor attached signs may be attached to or suspended from an awning or canopy, provided they are less than six square feet in size.
 - b. The lower edge of any awning shall be at least eight feet above ground level. This requirement supersedes the relevant sign standards in the Uniform Sign Code.
 - c. Signage is not allowed on any awning surfaces that are not specifically permitted in this section.
2. Other Zones. Awning signs in other zones shall be regulated as either minor or major attached signs.

C. Umbrella Signage. Signs on umbrellas are allowed without a sign permit but are limited to the lowest 12 inches of the umbrella (measured along the umbrella surface from the lowest edge). Umbrella signs shall comply with all other municipal code requirements.

15.435.090 Portable signs.

A. Number. Not more than one portable sign may be located on any one street frontage, except temporary signs allowed per NMC 15.435.100.

B. Size.

1. Residential Zones.

a. Residential Uses. One portable sign not to exceed six square feet.

b. All Other Permitted Uses. One portable sign not to exceed six square feet if located in the front yard, or 16 square feet if located elsewhere on the property.

2. Other Zones. The one portable sign may not exceed 12 square feet if located in the front yard, or 40 square feet if located elsewhere on the property.

C. Design. No portable sign shall be permanently affixed to any structure or the ground. No portable sign shall be attached to a tree, or utility pole, traffic sign, street sign, or any publicly-owned pole, post, wire or cable, except as authorized by the city. All signs shall be designed to be removed quickly. No portable sign shall be animated or internally illuminated. No readerboard shall be used as a portable sign, except as a temporary sign as permitted NMC 15.435.100.

D. Location. No portable sign shall be located within the public right-of-way except as allowed under NMC 15.435.110.

E. Height. The height of a portable sign shall not exceed the maximum height of buildings in that zone. [Ord. 2499, 11-2-98. Code 2001 § 151.598.]

15.435.100 Temporary signs for events.

In addition to the portable signs otherwise permitted in this code, a lot may contain temporary signs in excess of the number and size allowed by NMC 15.435.090 during events as listed below. Pennants, streamers, and inflatable objects may be used during these events.

A. Grand Opening Event. A grand opening is an event of up to 30 days in duration within 30 days of issuance of a certificate of occupancy for a new or remodeled structure, or within 30 days of change of business or ownership. No lot may have more than one grand opening event per calendar year. The applicant shall notify the city in writing of the beginning and ending dates prior to the grand opening event. If there are no freestanding signs on a frontage after the grand opening event, one of the temporary signs may remain on the property for the 60 days immediately after the end of the grand opening event. A temporary electronic message center may be used during a grand opening event. An unlimited number of temporary signs are allowed during a grand opening event.

B. Election Event. An election event begins 90 days prior to and ends 14 days after any public election. During this event a lot may contain ~~up to~~ no more than two additional temporary signs, not to exceed 12 square feet in total area for both signs. These signs shall not be located in the public right-of-way.

C. Other Events. A lot may have two other events per calendar year. The events may not be more than eight consecutive days in duration, nor less than 30 days apart. A temporary electronic message center may be used during the event. An unlimited number of temporary signs are allowed during the event. The applicant shall notify the city in writing of the beginning and ending dates prior to the Other Event.

D. Flags. Displays. ~~One flag display is permitted on each street frontage.~~ An unlimited number of displays is ~~flags are permitted on any legal holiday or Newberg city council designated festival~~ Memorial Day, Presidents Day, Independence Day, Veterans Day, Labor Day, Flag Day, Peace Officers Day, the Friday of the Camellia Festival, the Friday of the Old Fashioned Festival, or on any festival day designated by the Newberg City Council.

15.435.105 Sign Permit Program for Portable Signs on private property

A. Purpose: The purpose of the sign permit program is to allow additional temporary and portable signage for properties within the C-2, C-3, and Institutional zones than is otherwise allowed by the municipal code. The goal of the permit program is to allow additional signage on private property with a coordinated appearance.

B. Process: Applications for a permit under the sign permit program will be reviewed under a Type I process. Signage allowed under the permit must be well-maintained both physically and operationally. Signage under the permit that is found to not be well-maintained may result in the permit being revoked. Permits may be obtained for up to one year. Permits may be renewed, as long as they continue to meet the permit requirements. Only a property owner or their designee is allowed to obtain a permit under the sign permit program. A property owner is allowed one sign permit per property.

C. Criteria: The following criteria must be met for permit approval under the sign permit program:

1. Number of signs per property: 1 per 100 feet of street frontage in C-2 zone; 1 per 15 feet of street frontage, with a maximum of 4 signs total within the C-3 zone; and, 1 per 100 feet of street frontage within the Institutional zone. If more than one business is located on a property, at least one sign per business is allowed, as long as the business occupies a discrete space and possesses its own business license.
2. Size and location of signs: Maximum total signage for all temporary and portable signs under a sign permit shall be 1 square foot per 1 foot of street frontage. Maximum size allowed for any specific sign will be based on the location of the sign, up to a maximum of 40 square feet. The farther the distance a sign is from the front property line, the greater size that will be allowed for a specific sign. Maximum size for signage within the first 10 feet from the property line is 10 square feet. For every additional 10 feet from the property line, the maximum square footage for a sign will be an additional 10 square feet larger. Example: if a sign is between the front property line and 10 feet from the property line, then maximum sign size is 10 square feet; if a sign is between 10 feet and 20 feet from the property line, then the maximum sign size is 20 square feet in size, and so on.
3. Coordinated appearance: Every sign approved under an individual sign permit must have a cohesive, coordinated appearance. Signs must meet three of the following five criteria: similar size, colors, shape, materials, and/or font.

15.435.110 Signs within the public right-of-way.

A. Public signs are allowed ~~permitted~~ in the public right-of-way as allowed ~~permitted~~ by the governmental agency responsible for the right-of-way.

B. Temporary and/or portable signs for other than traffic control and motorist advisories are not allowed within state highway right-of-way administered by the Oregon Department of Transportation except on resolute highways. In 2015, the resolute highways in Newberg were: On First Street from Harrison Street to River Street, on Main Street from First Street to Illinois Street, and on College Street from First Street to Vermilion Street. On a resolute highway the city manages the portion of the right-of-way behind the curb and can permit portable signs on the sidewalk. Portable and/or temporary signs are not allowed by ODOT on Hancock Street except within the College Street or Main Street rights-of-way. Portable and/or temporary signs are not allowed within county road right-of-way administered by Yamhill County.

C B. For lots in the C-3 and C-4 zones, the one allowed portable sign per street frontage may be located, without permit, in the public right-of-way fronting that lot except as stated in 15.435.110B, provided it meets the following standards:

1. The sign may not be less than two feet nor more than four feet high. The sign must also conform to 15.410.060 if it is within the clear vision zone.
2. The sign may not be located within the vehicular path.
3. If located on a sidewalk, the sign must leave a clear access path ~~area~~ of at least five feet wide measured horizontally across the main part of the sidewalk and may not be located on an ADA wheelchair ramp.
4. If the sign is located adjacent to a striped on-street parking area, the sign must be located adjacent to the stripe.
5. The sign may not be located within three feet of a fire hydrant.
6. The sign owner must have the sign removed ~~be removed~~ during nonbusiness hours when the business being advertised is closed. ~~or hours the adjoining property is uninhabited.~~ In addition, signs must not be present between the hours of 2 AM and 5 AM.
7. The person placing the sign in the right of way must obtain written permission from the owner, or their designee, of the property abutting the right-of-way shall grant permission for any sign, other than a public sign, that is placed within that right-of-way fronting the property owner's lot. The written permission must be attached to the sign, and may be attached to the inside surface of an A-frame sign.
8. If more signs than are allowed by this code are ~~than one sign is~~ located in the right-of-way fronting one lot, all signs may be forfeited as per subsection (F E) of this section.
9. Portable and/or temporary signs are not allowed by ODOT on sidewalks along Hancock Street except within the College Street and Main Street rights-of-way.

~~C. For lots in other zones, one portable sign per street frontage may be allowed in the public right-of-way, provided:~~

- ~~1. The applicant first obtains a sign permit from the director approving the location of the sign. Approval is at the sole discretion of the director. The permit shall be affixed to the sign.~~
- ~~2. The standards of subsections (B)(1) through (B)(6) of this section are met.~~

D. For lots in other zones, two portable signs per street frontage may be allowed in the public right-of-way except as stated in 15.435.110B provided:

1. The standards of subsection C above shall be met with the exception of subsection (C)(6).
2. Signs may be displayed only during the following hours:
Monday: 6am to 10pm
Tuesday: 6am to 10pm
Wednesday: 6am to 10pm
Thursday: 6am to Midnight
Friday: 24 hours
Saturday: 24 hours
Sunday: Midnight to 10pm

In addition, no sign may be displayed for more than 4 consecutive days.

3. Any sign installed or placed in the public right-of-way within these zones not in conformance with subsection (C)(7) above shall be forfeited to the owner of the property abutting the right-of-way and is subject to confiscation by said owner.

4. Portable and/or temporary signs are not allowed in the right-of-way along Highway 99W, Highway 240 or Highway 219 except as noted in B above.

E. D. No other signs shall be placed within the public right-of-way except as specifically permitted by this code.

F E. Any sign installed or placed in the public right-of-way, except in conformance with the requirements of this code, shall be forfeited to the city public and subject to confiscation by city employees. In addition to other remedies hereunder, the city shall have the right to recover from the owner or person placing such a sign the full costs of removal and disposal of such sign. Identifying information on the sign shall be prima facie evidence that the individual or entity so identified is the violator. [Ord. 2706 § 1 (Exh. A(2)), 10-6-08; Ord. 2564, 4-15-02; Ord. 2499, 11-2-98. Code 2001 § 151.600.]

Penalty: See NMC 15.05.120.

Exhibit "B" to Planning Commission Resolution 2015-305
Findings –File DCA-14-001
Temporary and Portable Signs

Newberg Development Code § 151.590 PURPOSE.

- (A) *The citizens of Newberg desire a clean, attractive, economically vibrant, and safe community. Well planned and constructed signs can contribute to the community's success by directing and informing the public about commercial and other activities, and by creating attractive commercial and other neighborhoods. On the other hand, unregulated signage can create clutter, distractions, and hazards.*
- (B) *These regulations are designed:*
- (1) *To improve, maintain and preserve Newberg as a pleasing environment so as to improve the quality of life of all residents.*
 - (2) *To enhance the attractiveness of Newberg as a place to conduct business.*
 - (3) *To enable the identification of places of residences and business.*
 - (4) *To allow the freedom of expression.*
 - (5) *To reduce distractions and obstructions from signs which would adversely affect safety.*
 - (6) *To reduce the hazards from improperly placed or constructed signs.*

Newberg Comprehensive Plan

H. THE ECONOMY

GOAL: *To develop a diverse and stable economic base.*

POLICIES:

1. General Policies

- p. *The City shall strive to develop and promote a high quality of life in the community in order to attract and retain a diverse and highly skilled workforce.*
- q. *The City shall foster an environment of business innovation so that the community may remain economically competitive.*

J. URBAN DESIGN

GOAL 1: *To maintain and improve the natural beauty and visual character of the City.*

POLICIES:

1. General Policies

"Working Together For A Better Community-Serious About Service"

Z:\WP5FILES\FILES.DCA\DCA-14-001 Temporary and Portable Signs\PC staff reports\PC Resolution 2015-308 as adopted.doc

- g. *Community appearance should continue to be a major concern and subject of a major effort in the area. Street tree planting, landscaping, sign regulations and building improvements contribute to community appearance and should continue to be a major design concern and improvement effort.*

3. Commercial Areas Policies

- c. *The City shall maintain sign regulations to help create a business environment that is attractive to customers and citizens. The City and appointed committees shall seek to eliminate signs that detract from the aesthetics of commercial areas and that violate adopted sign design regulations. (Ordinance 98-2499, November 2, 1998).*

Findings: As stated in the above policies, visual appearance and economic vitality are both very important to the community. Signs are by their nature designed to be visible and are therefore a significant part of the city's visual appearance. Sign regulations are necessary to control the visual impact of signs. Local businesses and institutions need sufficient signage to communicate with the public and help their businesses or organizations prosper. The proposed code regulations would allow more temporary and portable signs with a permit than is currently allowed, which would aid local businesses and institutions but could have a negative visual impact if unlimited. However, the criteria that must be met to obtain a permit will ensure that the signs allowed under the permit will meet the goals of § 151.590 of the Newberg Development Code regarding the purpose of sign regulations. Also, the code changes regarding the use of other signage (pennants, streamers, inflatable objects, flags) clarify how and when these types of temporary signs are to be used. The proposed development code amendment therefore conforms to the Newberg Comprehensive Plan by balancing the goals of protecting the visual character of Newberg and fostering a strong economic environment.

ACCEPTED
BY PC

Steve Olson

From: Robert Soppe <compprobsolv@gmail.com>
Sent: Wednesday, August 12, 2015 11:35 AM
To: Steve Olson
Subject: Public testimony for tomorrow night's PC meeting

Steve:

Please include the following as part of public testimony regarding DCA-14-001, the amendment to the Portable and Temporary Sign Code to be heard by the Planning Commission on 8/13/2015.

I am following up on the email that is in your August 13 packet to help simplify and clarify the question about Portable Signs During Events. With a brief effort I suspect you'll agree that the Code is not clear. I'm providing Code language that I think will make it clear for different options of what you think is appropriate.

The code of interest I 15.435.100 "Temporary signs during events". I'm copying the proposed version from your Agenda for your convenience:

15.435.100 Temporary signs for events.

In addition to the portable signs otherwise permitted in this code, a lot may contain temporary signs in excess of the number and size allowed by NMC 15.435.090 during events as listed below. Pennants, streamers, and inflatable objects may be used during these events.

A. Grand Opening Event. A grand opening is an event of up to 30 days in duration within 30 days of issuance of a certificate of occupancy for a new or remodeled structure, or within 30 days of change of business or ownership. No lot may have more than one grand opening event per calendar year. The applicant shall notify the city in writing of the beginning and ending dates prior to the grand opening event. If there are no freestanding signs on a frontage after the grand opening event, one of the temporary signs may remain on the property for the 60 days immediately after the end of the grand opening event. A temporary electronic message center may be used during a grand opening event.

B. Election Event. An election event begins 90 days prior to and ends 14 days after any public election. During this event a lot may contain up to two additional temporary signs, not to exceed 12 square feet in total area for both signs. These signs shall not be located in the public right-of-way.

C. Other Events. A lot may have two other events per calendar year. The events may not be more than eight consecutive days in duration, nor less than 30 days apart. A temporary electronic message center may be used during the event.

D. Flags. Displays. ~~One flag display is permitted on each street frontage. An unlimited number of displays is~~ flags are permitted on any legal holiday or Newberg city council designated festival Memorial Day, Presidents Day, Independence Day, Veterans Day, Labor Day, Flag Day, Peace Officers Day, the Friday of the Camellia Festival, the Friday of the Old Fashioned Festival, or on any festival day designated by the Newberg City Council.

I would like you to consider how you interpret the Code for the following scenarios:

Grand Opening Event:

How many temporary signs are allowed during a Grand Opening Event (not counting a temporary electronic message center)?

(Note that there is no specific mention of ANY additional temporary signs being allowed during the event.)

Election Event:

How many temporary signs are allowed during an Election Event?

Other Events:

How many temporary signs are allowed during Other Events (not counting a temporary electronic message center)?

(Note that there is no specific mention of ANY additional temporary signs being allowed during the event.)

Flag Displays:

How many temporary signs are allowed during the listed days?

(Note that there is no specific mention of ANY additional temporary signs being allowed during this period.)

I would argue that if the Commissioners don't all have the same answers for the three questions listed above or that it is inconsistent with Staff's interpretation as stated in the Discussion Box in your Agenda, then this indicates how the revised (and existing) Code isn't clear and should be changed.

Staff has cleaned this up significantly by adding "Pennants, streamers, and inflatable objects may be used during these events". If the intent is to allow unlimited temporary signs (including pennants, streamers, and inflatable objects) during all four exceptions, then I would say that this addition suffices and no more consideration is needed. (I see a conflict with the language of (B) but will leave that for the Commission.) I would question, though, why the Commission would want to allow unlimited temporary signs during Election Events or dates where unlimited flags are allowed. Following the interpretation that Staff provided in your Agenda ("Staff has read the code section below as allowing an unlimited number of temporary signs during the events listed below") it seems that this is exactly how Staff has interpreted the Code.

Does the Planning Commission really want to allow unlimited temporary signs during the 104-day period around elections and also during flag days? I suspect not.

Fortunately, the solutions are fairly simple. If an explicit statement about the number of temporary signs allowed is added to each of 15.425.100A-D then it will be clear. Specifically:

- 1) At the end of 15.425.100(A) add "An unlimited number of temporary signs are allowed during a grand opening event".
- 2) At the end of 15.425.100(B) change "may contain up to two" to "may contain no more than two". (I think the Code is clear in limiting it to two additional temporary signs, but Staff's Discussion box makes it clear that they interpret it differently.)
- 3) At the end of 15.425.100(C) add "An unlimited number of temporary signs are allowed during the event". I am assuming here that the Commission agrees with Staff's interpretation and wants any property to be allowed to

have two 8-day periods every year where it can have unlimited temporary signs. If not, then the following should be added instead: "No other additional temporary signs are allowed during the event". I would suggest that this section could pose a significant enforcement problem as the City need not be notified as to when these events occur (unlike a Grand Opening Event). A wise property owner would always claim it was an "Other Event" if they were questioned about an excessive number of temporary signs. To resolve this, I think that the Commission should consider adding the language similar to that from Grand Opening Events: "The applicant shall notify the city in writing of the beginning and ending dates prior to the Other Events" to the end of the section. This doesn't seem like an extreme burden for an event that can occur no more than twice a year.

- 4) At the end of 15.425.100(D) add "An unlimited number of temporary signs are allowed during these dates" if the Commission agrees with Staff's interpretation and would allow unlimited temporary signs during "flag days". If not, then the following should be added instead: "No other additional temporary signs are allowed during these days".

In order to simplify your task at the meeting, I'm providing the following amendment suggestions for you to choose based on your opinion:

- A) If you agree with Staff's interpretation and the text of the revised Code (unlimited temporary signs should be allowed during Grand Opening Events, during 104-day Election Events, during two 8-day periods each year, and during flag dates and that there are no enforcement concerns with the Other Events exception) then no amendments need to be made. I'll leave it to the Commission to decide how to deal with the conflict between the language of (B): "up to two additional temporary signs" and Staff's interpretation: "allowing an unlimited number of temporary signs during the events listed below".

- B) If you think that unlimited temporary signs should be allowed only during Grand Opening Events and Other Events and that there are no enforcement concerns regarding the Other Events exception, then amend as follows:

At the end of 15.425.100(A) add "An unlimited number of temporary signs are allowed during a grand opening event". (Consistent with Staff's interpretation but more explicit.)

At the end of 15.425.100(B) change "may contain up to two" to "may contain no more than two".

At the end of 15.425.100(C) add "An unlimited number of temporary signs are allowed during the event". (Consistent with Staff's interpretation but more explicit.)

At the end of 15.425.100(D) add "No other additional temporary signs are allowed during these days".

- C) If you think that unlimited temporary signs should be allowed only during Grand Opening Events and Other Events and that there IS an enforcement concern regarding the Other Events exception, then amend as follows:

At the end of 15.425.100(A) add "An unlimited number of temporary signs are allowed during a grand opening event". (Consistent with Staff's interpretation but more explicit.)

At the end of 15.425.100(B) change "may contain up to two" to "may contain no more than two".

At the end of 15.425.100(C) add "An unlimited number of temporary signs are allowed during the event". (Consistent with Staff's interpretation but more explicit.)

At the end of 15.425.100(C) add: "The applicant shall notify the city in writing of the beginning and ending dates prior to the Other Events".

At the end of 15.425.100(D) add "No other additional temporary signs are allowed during these days".

As always, thank you for your consideration.

Robert Soppe

(503) 784-8695

Steve Olson

From: FRICKE Daniel L <Daniel.L.FRICKE@odot.state.or.us>
Sent: Thursday, May 28, 2015 10:27 AM
To: Steve Olson
Cc: JUSTER Gerard P *Gerry; CHUCULATE David L; JORDAN Donald L
Subject: ODOT Comments on DCA-14-001

Steve –

Thank you for referring this proposed code amendment to ODOT Region 2 for review and comment. ODOT staff have reviewed the proposed code amendments pertaining to placement of private temporary signs in public right-of-way and we have the following comments.

1. ODOT does not permit signs on right-of-way except for the following: Temporary portable variable message signs, which as a rule are only for advising motorists of events or roadwork that may cause delays or detours, no advertising of any kind. ODOT has periodically permitted temporary electronic "Your Speed Is" signs used by police departments but other than that the only other signs allowed are temporary traffic control signs.
2. Based on the above, ODOT recommends that the following language be included in Section 15.435.110 – Signs within the public right-of-way:

Temporary and/or portable signs for other than traffic control and motorist advisories are not permitted within state highway right-of-way administered by the Oregon Department of Transportation.

These comments should be included in the record as ODOT testimony. Please feel free to contact me or Gerry Juster if you have questions or need additional information.

Dan Fricke, Senior Transportation Planner
Oregon Department of Transportation
Region 2

455 Airport Road SE Building B
Salem, OR 97301-5395
Ph: 503-986-2663 Fax: 503-986-2840
e-mail: daniel.l.fricke@odot.state.or.us

From: Steve Olson [mailto:steve.olson@newbergoregon.gov]
Sent: Friday, May 01, 2015 10:17 AM
To: 'phelanj@co.yamhill.or.us'; Ken Friday; ODOT Reg 2 Planning Manager
Subject: 6498_City_of_Newberg

To: Yamhill County Public Works, Yamhill County Planning, and ODOT Region 2:

Re: File DCA-14-001 – potential development code amendment for portable signs

Newberg is considering a development code amendment for portable signs. The Planning Commission recently approved the attached resolution, which recommends changes to Newberg's Development Code for signs in the public right of way. Most of the public right of way in Newberg is under city jurisdiction, but some is under State jurisdiction and some under County jurisdiction. We would like your comments on the proposed changes before we send the Planning Commission recommendation to our City Council.

Please respond by **May 20, 2015**.

Steve Olson

From: FRICKE Daniel L <Daniel.L.FRICKE@odot.state.or.us>
Sent: Monday, July 13, 2015 11:30 AM
To: Steve Olson
Subject: FW: Map of Newberg
Attachments: Newberg.pdf

Steve –

The attached map shows the status of ODOT facilities in the city. See Gerry's explanation below. Simple answer – the streets marked with blue lines ODOT only manages curb-to-curb. Let me know if you need anything else.

Dan

*Dan Fricke, Senior Transportation Planner
Oregon Department of Transportation
Region 2
455 Airport Road SE Building B
Salem, OR 97301-5395
Ph: 503-986-2663 Fax: 503-986-2840
e-mail: daniel.l.fricke@odot.state.or.us*

From: JUSTER Gerard P *Gerry
Sent: Monday, July 13, 2015 11:21 AM
To: FRICKE Daniel L
Subject: FW: Map of Newberg

Hi Dan,

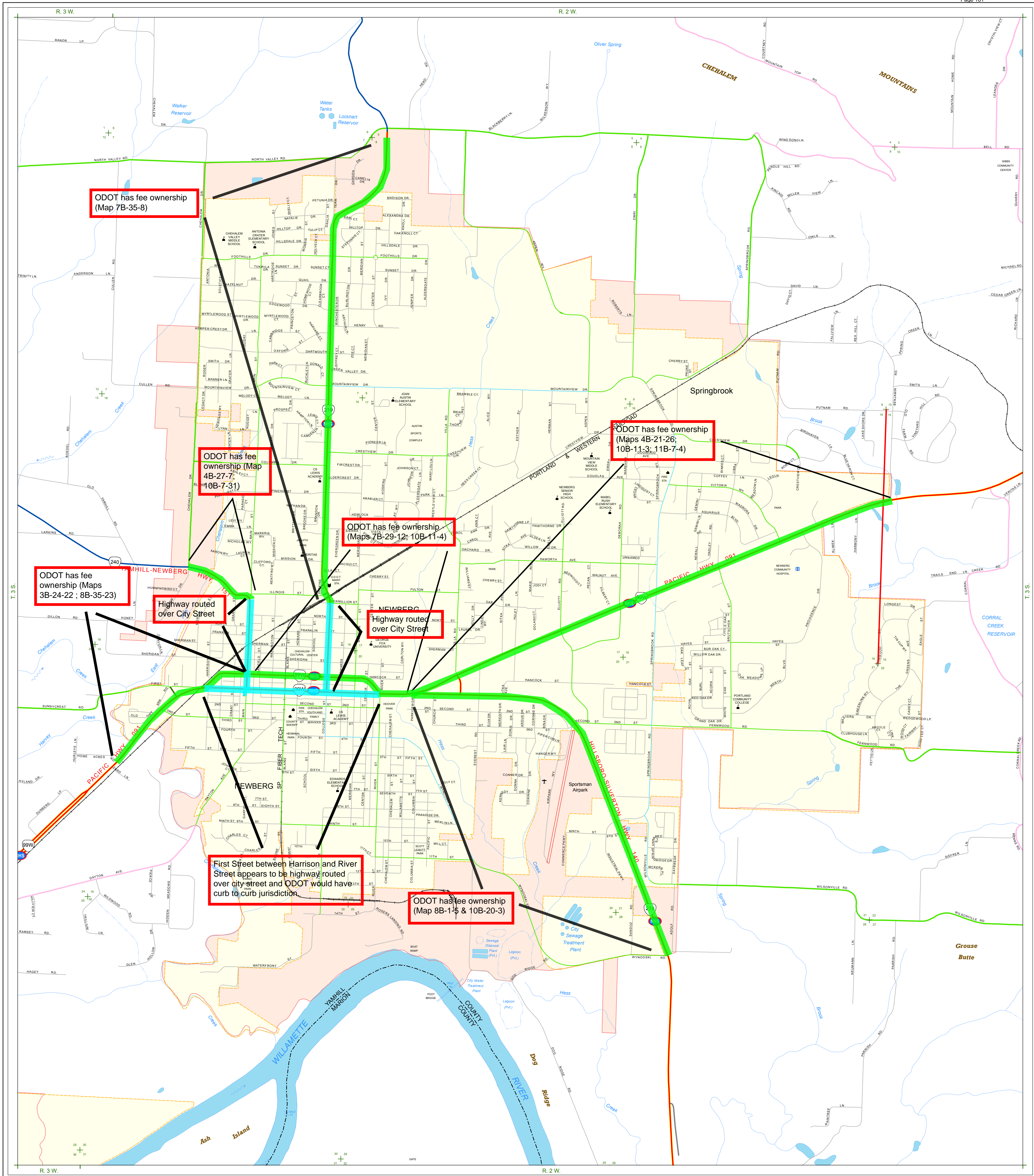
I got this information from Nancy this morning related to the portions of highway inside the city limits of Newberg.

In a nutshell; any portion of the map with a light blue line indicates resolute highway where ODOT manages from curb to curb. The green line is portions of highway where ODOT has acquired in fee right-of-way and manages from right-of-way boundary-line on both sides of the highway.

Feel free to share this with Steve Olson.

Gerry Juster
Development Review Coordinator
Oregon Department of Transportation
855 Airport Rd SE, Bldg. Y | Salem, Oregon 97301
Office: 503.986.2732 | FAX: 503.986.2630
e-mail: gerard.p.juster@odot.state.or.us

From: WARNICKE Nancy A
Sent: Monday, July 13, 2015 10:54 AM
To: JUSTER Gerard P *Gerry
Subject: Map of Newberg



LEGEND

FOR FURTHER FUNCTIONAL CLASSIFICATION INFORMATION, CONTACT ODOT REGION OFFICE.

FUNCTIONAL CLASSIFICATION

STATE HWY

OTHER JURISDICTION

INTERSTATE

PRINCIPAL ARTERIAL

MINOR ARTERIAL

MAJOR COLLECTOR

MINOR COLLECTOR

LOCAL ROAD

INTERSTATE - US ROUTE - ORE. ROUTE

NATIONAL HIGHWAY SYSTEM ROUTE

CITY LIMIT

URBAN GROWTH BOUNDARY

RAILROAD - AMTRAK PASSENGER STATION

GRAVEL PIT - QUARRY - ODOT STOCKPILE

ODOT MAINTENANCE STATION

PUBLIC BUILDING

COURTHOUSE

HOSPITAL

CITY HALL

ARMORY

POST OFFICE

SCHOOL

LIBRARY

SAFETY REST AREA

WEIGH STATION

PARK & RIDE LOCATION

INTERCITY - CITY TRANSIT

COMMERCIAL - GENERAL AVIATION

PORT FACILITY

Published by

NORTH

PREPARED DIGITALLY BY THE OREGON DEPARTMENT OF TRANSPORTATION IN COOPERATION WITH THE U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION

SCALE

0 800 1,600 3,200 Feet

0 210 420 840 Meters

NEWBERG POPULATION 22,580

T. 3 S. R. 2-3 W. W.M.

OREGON TRANSPORTATION MAP

Showing Federal Functional Classification of Roads

City of

NEWBERG

YAMHILL COUNTY 2014 Edition

PARK & RIDE INTERBUS AMTRAK

AVAILABLE TRANSPORTATION SERVICES SHOWN WITH YELLOW BACKGROUND

PORT AIRPORT COMM. AIR

AVAILABLE TRANSPORTATION SERVICES SHOWN WITH YELLOW BACKGROUND

Steve Olson

From: Bill Anderson <andersonb@co.yamhill.or.us>
Sent: Monday, May 04, 2015 9:27 AM
To: Steve Olson
Cc: John Phelan
Subject: Private signs in ROW

Steve,

Thanks for considering the County as you seek to amend your sign ordinance in Newberg. As I'm sure you know the county roads that penetrate the city limits of Newberg are a mixed bag of grass or gravel shoulders with a few streets that are curbed with sidewalks. County policy doesn't allow for private signs in the ROW, however we get some of the wineries that will set out sandwich boards on occasions and we generally don't have a problem with it if doesn't create a traffic hazard. I'm sure we can work with whatever the City Council comes up with. When something is finalized I would appreciate a copy sent our way just to be up to speed on it.

Regards, Bill Anderson

Steve Olson

From: Jim Gilbert <jimg@burgerville.com>
Sent: Thursday, May 14, 2015 11:09 AM
To: Steve Olson
Subject: FW:
Attachments: 1875 Art Approval Burgerville March 16 2015.pdf

Steve,

Please let me you received this email.

Thank you

Jim

From: Jim Gilbert
Sent: Thursday, May 14, 2015 11:05 AM
To: steve.olson@newberg.gov; Jim Gilbert
Subject:

Steve,

Thank you for your time this morning, I have attached a copy of our umbrella are design. I hope this helps.

Thank you

Jim Gilbert
Director of Facilities
360-608-0270

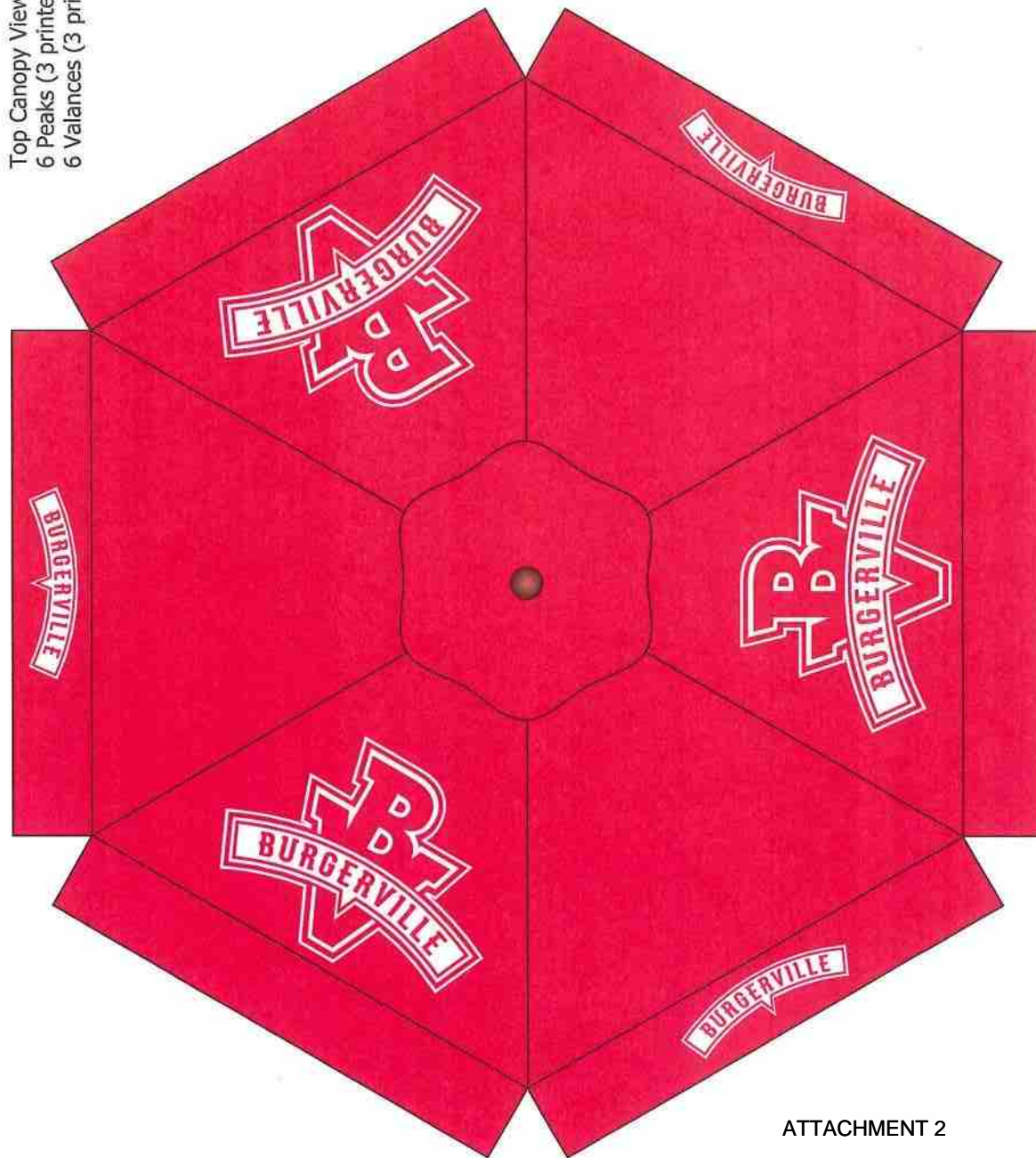
March 16, 2015

472 Meadowland Drive, Unit #5 Phone: 1-800-655-7311 Website: www.projectgraphics.com
South Burlington, VT 05403

1875 Burgerville LLC: Burgerville CREATIVE
Qty: (200); ART Layout: Series PG II Cafe Umbrella - 6.5' 400D Nylon (Red) Canopy; - Polygonal (6) (Peaks/Valances); 1 Color (White) Imprint on Alternating Peaks & Valances (Top Side); 1 Design; Structure Aluminum w/ Crank; Warranty 1.5 Year

SEE PAGE 2 for LOGO DETAIL

Top Canopy View
6 Peaks (3 printed)
6 Valances (3 printed)



Customer Approval: _____
Date: _____
Please sign and fax to 1-866-794-1489
Colors Specified <input type="checkbox"/> White
Substrate Specified <input checked="" type="checkbox"/> 400D Nylon (Red)
Required to start production - Signed customer approval - Signed quote - Deposit
Shipping Address: Burgerville LLC 109 W 17th St Vancouver, WA 98660 US Shipping Method: Ground

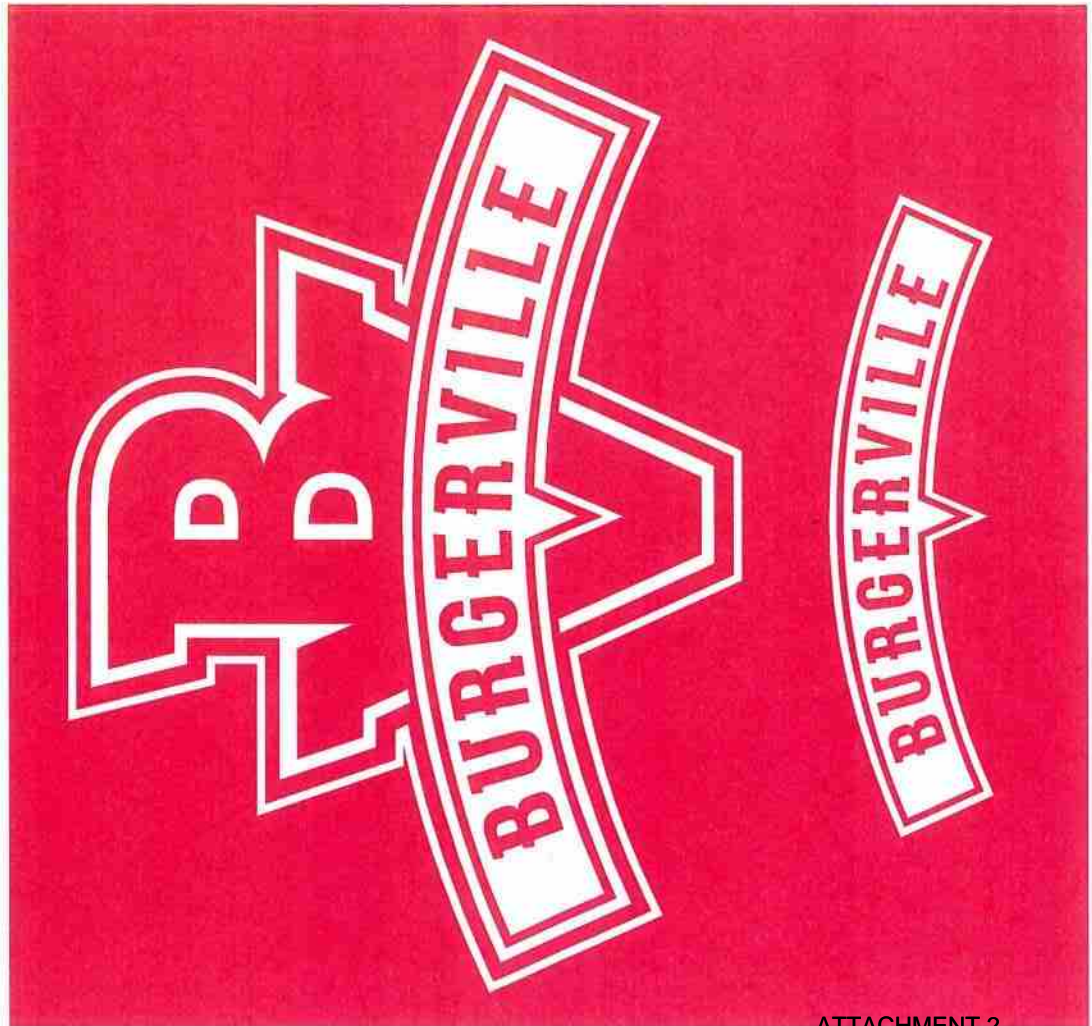
March 16, 2015

472 Meadowland Drive, Unit #5
South Burlington, VT 05403
Phone: 1-800-655-7311
Website: www.projectgraphics.com

LOGO ORIGIN: BurgerVille To Go Menu 0814_web.pdf

Logo used in this proof is obtained from the link below, and modified to print as 1-Color.
http://www.burgerville.com/wp-content/uploads/Burgerville%20To%20Go%20Menu%200814_web.pdf

If logo is incorrect please provide logo file in vector file type in Adobe Illustrator or EPS format.



ATTACHMENT 2

Customer Approval: _____
Date: _____
Please sign and fax to 1-866-794-1489
Colors Specified <input type="checkbox"/> White
Substrate Specified <input checked="" type="checkbox"/> 400D Nylon (Red)
Required to start production - Signed customer approval - Signed quote - Deposit
Shipping Address: Burgerville LLC 109 W 17th St Vancouver, WA 98660 US Shipping Method: Ground

Steve Olson

From: Robert Soppe <rs@compprobsolv.com>
Sent: Sunday, February 15, 2015 2:08 PM
To: Steve Olson; Jacque M. Betz
Subject: Follow up on Planning commission meeting

I wanted to follow up on an important item regarding Thursday's Planning Commission meeting.

There was an extended discussion about the requirement of notification before confiscation. I realize that the amendment didn't get support of the Commission, but it will come up again before the Council. I think that it would be in the best interest of the City for Staff to continue to push to have the notification issued dealt with on a discretionary basis and not an actual requirement. There will be instances where immediate confiscation is important and a requirement of prior notification will block such an action.

Imagine that a sign is placed in front of City Hall without authorization, but there is nothing on the sign to indicate the owner. For example, an a-frame sign that meets all standards except for those related to written approval that has nothing displayed on it except for "I don't like Newberg". You can certainly imagine something much worse, but this works for my example. How would you notify the "owner"? If notification is a requirement before confiscating the sign, does this mean that the sign must remain in place indefinitely?

As another example, imagine that I place a sign with a very offensive point of view in front of someone's house or property. Again, the sign meets all standards except for those related to written approval. As proposed, the sign could not be removed for at least a full day to satisfy the "second offence" requirement. How quickly would I be notified?

I will use the incident described by the local business owner at the Planning Commission as my last example. How would prior notification have benefitted her? Under the proposed amendment, her sign would have had a second violation in another day (every night is a violation), so the confiscation would have been delayed by only one day. Yes, she would have had the opportunity to remove the sign herself, but she still has the option to retrieve the sign from the City although it is a bit further away. By her own admission (and by her action of leaving the sign at the City for storage) she doesn't have a place to store the sign.

I do think that notification (where practical) should be a requirement AFTER confiscation. That is, if there is a phone number on the sign, an address, or an easily identified business name, the City should make some effort to notify the owner that the sign has been confiscated and can be retrieved (if that is the policy) from the City. A form letter (with a space to write or type the location of where the sign had been) could be a reasonable solution to this. I would also suggest that such a letter mention that there is a potential for a financial penalty for the improperly displayed sign (15.435.110E could be cited), but that it is being waived in this instance. It does not seem reasonable that the sign owner has no clue as to why the sign disappeared.

Thank you for your consideration of these comments and the excellent work so far on the revisions to the sign code.

Robert Soppe
RS@CompProbSolv.com
(503) 538-5495

Steve Olson

From: Robert Soppe <rs@compproblemsolv.com>
Sent: Wednesday, February 18, 2015 9:38 AM
To: Steve Olson
Subject: Suggested correction to sign code (non-c3/c4 ROW)

Steve:

I wanted to add a suggested correction to the language I provided that the PC adopted. Commissioner Stuhr was correct (please let her know!) about the discrepancy on forfeiting signs. The language that I suggested for 15.435.110C is somewhat in conflict with 15.435.110B8. To be clear, B8 states:
If more than one sign is located in the right-of-way fronting one lot, all signs may be forfeited as per subsection (E) of this section.

The new section C1 includes all of section B except for B6, so B8 is included. Since B8 refers to "one sign" and C allows two signs, there is a conflict. Fortunately, I think it is easily resolved.

Option A:

Change 15.435.110B8 to read:

If more signs than are allowed in this Code are located in the right-of-way fronting one lot, all signs may be forfeited as per subsection (E) of this section.
(change "one sign is" to "more signs than are allowed in this Code are")

Option B:

Change 15.435.110C1 to read:

The standards of subsection B above shall be met with the exception of subsections (B)(6) and (B)(8).
(change "subsection" to "subsections" and add "and (B)(8)")

And add 15.435.110C4:

If more than two signs are located in the right-of-way fronting one lot, all signs may be forfeited as per subsection (E) of this section.

I think Option A is the better solution as it minimizes the likelihood of a similar conflict in the future and has fewer changes. When duplicate data exists in more than one place ("one sign" in this case), there is the risk that it is changed in one place but not the other. The "more signs than are allowed" will track any other changes that are made without revision. For example, if the code regarding election events were to allow additional signs in the ROW downtown, under the present language, B8 would have to be revised. With the Option A revision, it would not.

I would think that you could make the change yourself when you send it to the City Council as a "scrivener's error" if properly noted. They seem pretty fond of that term! This would not change the intent behind the Commission's recommendation, only clean up a discrepancy.

Robert Soppe
Computer Problem Solvers
RS@CompProbSolv.com
(503) 538-5495

Steve Olson

From: Robert Soppe <rs@compprobsolv.com>
Sent: Monday, June 29, 2015 10:27 AM
To: Steve Olson
Cc: Brad Allen
Subject: Sign code consideration

Steve:

I have a couple more things to consider as part of the ongoing revisions to the Sign Code.

The first is pretty simple. Does it seem appropriate to allow portable signs in bulb-outs downtown? Though that is a convenient place for advertising, one could certainly argue that it takes away some of the safety benefits of the bulb-out. I would suggest that this is something to be added as a possible change to be considered when the Code gets back to the Planning Commission or to the Council.

The other is something that we've not discussed before. I think you've done an excellent job in the revision process to try to clean up the language of the Code so that it is understandable. I think that is important and that it benefits everyone involved. I've seen far too many issues come up in Newberg because of poorly written regulations that would likely not have occurred had the language been clearer. I'm concerned that 15.435.100 "Temporary signs for events" may have some issues here.

My concern has to do with confusion about the lot where an event is located and the lot where a sign for it is displayed. While they are typically the same lot, this need not be the case. For example: "C. Other Events: A lot may have two other events per calendar year. The events may not be more than eight consecutive days in duration, nor less than 30 days apart". I would presume that these limits apply to the events themselves, but not about placement of signs on other lots that advertise them. Specifically, if can I place an electronic messaging center on a lot and keep it there all year if I can keep associating it with an "Other event" on different lots around town? That is, the first week of the year I use it for an event at one lot, the next week associate it with an event on another lot, third with yet another lot, etc.

Lastly, I want to make sure that I am reading 15.435.100 correctly. As I read it, all it allows as an addition to the standard Code are the following:

- 1) A temporary EMC during a grand opening event
- 2) Two additional temporary signs during Election Events
- 3) A temporary EMC up to twice a year during Other Events
- 4) Flag displays during legal holidays or designated festivals

Am I reading this correctly?

Robert Soppe
Computer Problem Solvers
RS@CompProbSolv.com
(503) 538-5495

Steve Olson

From: Robert Soppe <rs@compprobsolv.com>
Sent: Monday, June 29, 2015 2:00 PM
To: Brad Allen
Cc: Steve Olson
Subject: RE: Signs.....

Brad:

This was what motivated me to write the previous email to Steve (copied to you) about this part of the Code. I'm not disagreeing with your interpretation of the Code (though I interpret it differently), just finding the Code to be very unclear. This is likely more of an issue for Steve to deal with as it really refers to how the Code is written. As with other parts of the Code I think that Staff/PC/Council should decide what is desired and then make sure the Code actually reads that way. I don't think this section fits that criteria at the moment.

My impression is that you are interpreting this section in this way:

For a Grand Opening Event, you are allowed an unlimited number of temporary signs whose size is also not regulated, for up to 30 days. This authority comes not from 15.435.100(A), but from the initial sentence of 15.435.100: "... a lot may contain temporary signs in excess of the number and size....". In addition to the temporary signs, a temporary EMC may be used. This is authorized explicitly by 15.435.100(A). So far, I can follow, though think clearer writing of the Code is in order.

Note that there are only things that (A) explicitly authorizes: a temporary sign for 60 days after the event and a temporary EMC. It does not authorize any other additional signs. If other temporary signs are allowed (in addition to ones always allowed) during the Event, the authorization must come from somewhere else in the Code. That is how I determined that you must be using the initial sentence to authorize additional signs.

When it comes to Election Events, there is a 104-day period during which two additional temporary signs of regulated size may be displayed. What I find inconsistent is that the authority for additional signs for Grand Opening Events comes from the header to the section where it is explicitly mentioned in (B).

I think the real problem comes when trying to interpret (C). Following the logic used for (A), this section allows an unlimited number of temporary signs whose size is also not regulated up to 8 consecutive days twice a year. As with (A), a temporary EMC is explicitly allowed in (C).

It gets worse when one looks at (D) if one uses the same logic as was used in the previous subsections. That is, the logic seems to be that the header of the section allows for unlimited temporary signs unless the subsection puts specific limits on them, as is done in (B). There is no such limitation in (D), so consistency would say that unlimited temporary signs are allowed by (D) during legal holidays and Council-designated festival (days). In addition, just as (A) explicitly allows a temporary EMC, (D) explicitly allows unlimited flag displays on those same days.

The real question here is what is the subject of "as listed" in the first sentence? Is it referring to the signs (my interpretation) or to the events (your interpretation)? If it refers to the signs, then grammatically it is saying that the additional signs listed below are allowed. Since the only additional sign listed for (A) and (C) is a temporary EMC and (D) only allows additional flags, those are all that would be allowed under my interpretation.

If "as listed" refers to the events (as it appears you are reading it when (A) is used to allow Shari's to have the additional signs), then consistent logic says that during the events listed in (A)-(D), unlimited temporary signs are allowed unless the subsection specifically limits them. (B) is the only one that has this limit.

I find it unlikely that this is what was intended with the Code. Fortunately, I think the resolution of this is pretty easy. The solution is to add the specific additional signs that are allowed in each specific section. For example:

For (A), before the last sentence, add "An unlimited number and size of temporary signs may be used during a grand opening event."

If it is the intent to allow unlimited temporary signs for Other Events, then the same sentence could be added before the last sentence in (C). If that is not the intent, then the following could be added before the last sentence of (C): "This subsection does not change the permitted number of temporary signs on these days".

If it is not the intent to allow unlimited temporary signs on legal holidays or festival days, that same sentence could be added as the last sentence in (D).

Lastly, something would need to be done to change the first sentence of the section to make it clear that "as listed" refers to signs and not events. I would suggest simply dropping "during events".

Steve Olson

From: Christine Kirk <omgirl57@yahoo.com>
Sent: Wednesday, February 11, 2015 3:05 PM
To: Steve Olson
Subject: Sign Codes

Dear Steve,

My name is Christine Kirk , and am the owner of All People Yoga Studios. I want you to know right up front , I understand the reasoning of the new sign codes for Newberg. Mine were confiscated on 2/10/15. I have been in touch with Brad Allen , enforcement officer, & will be retrieving my signs today.

Unfortunately , I am unable to attend the planning meeting, 2/12/15 in regards to these matters. I will be teaching.

Please take this information in to consideration in regards to these issues. I just need a little bit of flexibility on the hours I am able to have my signs out. Also , where I am on Blaine street between the highway, it would be more beneficial if I am able to put them out on 1st Street, or the other one way for more visibility. Studio operational hours are different than a retail store, wine tasting rooms, restaurants, etc.

So maybe a flex time? They really do bring folks in to our small biz.

Please keep this in mind when you are planning these ordinances.
Thank You for your time & any efforts to help our our small business to thrive for the better of the community!

Christine Kirk
All People Yoga
503-560-9119

Steve Olson

From: Robert Soppe <rs@compprobsolv.com>
Sent: Friday, January 09, 2015 3:31 PM
To: Steve Olson
Cc: Brad Allen
Subject: Notes from last night's PC meeting
Attachments: Notes for Planning Commission 01-08-2015 (Sign Ordinance) as submitted.docx

Steve:

Attached are my revised notes from last night's meeting. It should be a fairly accurate representation of what I spoke at the meeting. Please pass them along to whomever is appropriate if you want them in the record.

I will have some other comments as a follow up on this. As Public Testimony is closed, I'll just send them to you to handle as you see fit.

Robert Soppe
Computer Problem Solvers
RS@CompProbSolv.com
(503) 538-5495

Planning Commission 01-08-2015 (Signs)

Staff did an excellent job on implementing many of the changes and clarifications. I won't cite each but would like to commend them on their work.

- 1) Pg. 16, 15.435.100D Flags: The listing of specific dates to allow unlimited flags is a significant improvement. I would suggest adding "or on any festival day designated by the Newberg City Council" at the end. This restores the Council's flexibility without having to revise the Code.
- 2) Pg. 18, Signs in the public right-of-way: 15.435.110B1 allows for signs between two and four feet in height. As I read 15.410.060 regarding vision clearance standards at intersections, signs taller than 2 ½ feet would violate these standards. I would suggest adding at the end of 15.445.110B1: "The sign must also conform to 15.410.060 if it is within the clear vision zone". Otherwise it would be easy to miss this restriction or to think that the two to four foot designation overrides the clear vision zone restrictions.
- 3) Pg. 18, I like Staff's revisions to the five foot clearance around signs in the public right-of-way. I think that it is clear enough that it doesn't require a drawing.
- 4) Pg. 18, 15.435.110B6, regarding when signs in the right-of-way may be displayed:
 - a. Rather than "The sign owner must remove the sign..." I would suggest "The sign owner must have the sign removed..." to be clear that he does not have to remove it himself.
 - b. The revised code requires that the sign be removed "when the abutting business is closed". I want to point out that the Commissioners were generally talking about the hours of the business being advertised rather than the one where it is located. While I agree that the proposed revision helps with enforcement, I think it more appropriate to allow the sign to be displayed while the advertised business is open. I will provide a suggestion later to make enforcement easier.
 - c. There was discussion about putting time restrictions on signs in the right-of-way. I would suggest adding the following at the end of 15.435.110B6: "In addition, signs must not be present between the hours of 2AM and 5AM".
 - d. B7 requires that the written permission must come from the property owner. I would suggest adding "or his designee" here and anywhere else it is appropriate or adding a general statement to that effect. As mentioned before, it may be difficult to track down the owner for such permission. If written permission is required, would it not make sense to require that it be attached to the sign as proof? That would be easy to do on the inside of an a-frame sign, for example inside a plastic bag affixed to the sign by adhesive tape, and would make the Enforcement Officer's job much easier. The City could design a simple form for this and could have it include a declaration of the business hours when it is expected to be displayed.
- 5) Pg. 19, clarifying that signs in the public right-of-way outside of C-3 and C-4 are not allowed. I suggest that the Commission has not fully considered the implications of this prohibition and the sort of reaction that is likely to result in the enforcement of it. I have previously provided some photos of examples that are in violation of the Code that need to be carefully considered. For example, the 2nd Street Church uses two such signs for short periods of time to announce their

Sunday services. The Masonic Lodge uses them to advertise plays and other events. F.I.S.H. on Elliott Street uses such a sign to advertise their presence.

Of course, there is also the issue of Garage Sale and Real Estate signs that violate this part of the Code.

Since the last meeting, I have asked close to a dozen local residents for their view on this. The primary objection that I heard about them was how long they are left up. I would suggest that with a handful of rules, these signs could be accommodated in a reasonable way. My suggestion is to allow such signs with the same restrictions as in the C-3 and C-4 zones, with two changes. I'd restrict the hours further during which they could be displayed and I'd allow the abutting property owner to confiscate the signs if written permission has not been granted. I propose the following as 15.435.110C:

For lots in other zones, one portable sign per street frontage may be allowed in the public right-of-way provided:

1. The standards of subsection B above shall be met with the exception of subsection (B)(6).
2. The sign must be removed when the event being advertised is not open to the general public. In addition, signs must not be present between the hours of 11PM and 5AM.
3. Any sign installed or placed in the public right-of-way within these zones not in conformance with subsection (B)(7) above shall be forfeited to the owner of the property abutting the right-of-way and is subject to confiscation by said owner.

Thank you for your consideration of these comments.

Steve Olson

From: Robert Soppe <rs@compprobsolv.com>
Sent: Wednesday, January 21, 2015 11:55 PM
To: Steve Olson
Subject: Additional comments on the Sign Ordinance revisions
Attachments: Portable Sign Authorization.docx

Steve:

The comments that I'd like to add have to do with signs in the public ROW outside of the C-3/C-4 zones. The proposed language that I included in my testimony has a number of significant shortcomings, so I've revised them and included them below for your consideration.

I believe that our present situation of prohibiting signs in these is an unworkable one. We've "lived" with it by pretty much ignoring the Code in this case. One of the many problems with this is that the proliferation of such signs gives people the understandable feeling that they are, in fact, allowed. If the Code as written were actually enforced, I think it would become a serious amount of work for Code Enforcement and would make many citizens angry. I'm hoping that we can come up with something that is workable.

I think that the main objections to these signs are that they are left up so long and that there can be so many in one small area. My suggested Code should help with that.

I've tried to consider what sort of signs are usually found in this area and I think it comes down to the following:

- 1) Garage Sale signs
- 2) Real Estate signs
- 3) Political signs
- 4) General product advertising
- 5) Lost or found animals

I believe that what I am proposing handles the first two fairly well. I would expect that those placing the political signs will find the time limits unworkable. My personal view is that the general product advertising signs are inappropriate in these locations. As far as the lost and found animal signs, I'm not sure there is a reasonable solution at all so I've not tried to address it.

I think it is critical to remember that the proposed rules need to be viewed in context of the present rules, where no signs are allowed. While what I am proposing may seem restrictive (especially in terms of hours allowed), it is far more generous than the present situation.

** See 1/28 email for revised code language*
I propose the following as 15.435.110C:

For lots in other zones, two portable signs per street frontage may be allowed in the public right-of-way provided:

1. The standards of subsection B above shall be met with the exception of subsection (B)(6).
2. The sign may be displayed between the hours of 6am and 10pm (this seems like a reasonable range for garage sale signs; others need not be up as long) for no more than 4 (?) consecutive days.
3. Any sign installed or placed in the public right-of-way within these zones not in conformance with subsection (B)(7) above shall be forfeited to the owner of the property abutting the right-of-way and is subject to confiscation by said owner.

Note: (B)(7) is the requirement for written permission by the property owner.

This accomplishes a number of things:

- 1) Two sign limit per frontage (should that be changed to 1 as with downtown?)
- 2) Abutting property owner's written permission must be obtained (just as you have proposed for C-3/C-4)
- 3) Standard height, attachment, and other restrictions apply
- 4) Signs must be removed every night as with downtown. (Many will object to the inconvenience of this, of course.)
- 5) If you go with my suggestion from the previous meeting, a copy of the written permission will need to be attached. This is not quite as simple as with A-frame signs (most of these signs are more like political signs in construction), but I think it is still workable. I would repeat the argument that if you are requiring written permission, attaching it to the sign should not be a great burden. I would imagine it being placed in a plastic sealable bag and taped to the sign. For a political-type sign (flat sign attached to a post), I would expect that the bag would be wrapped around the post and taped to it.
- 6) To minimize the burden on enforcement, the property owner has the right to remove signs that he didn't authorize. It doesn't allow him that authority for signs that are otherwise non-compliant (size, height, etc.), but I suspect that this would be much less of a problem.

I think that the language needs to somewhere specify that the written approval (in all zones) may be granted by the property owner's designee. I don't know if you should change "property owner" to "property owner or his designee" everywhere or if a single statement to that effect will suffice. Though not strictly correct, I would assume that such a designation would not have to be in writing by the owner and that a fair assumption would be that the tenant is the implied designee unless the owner objects. Of course, it would be better to have language that makes that explicit, but I'll leave that to your talents to craft it if you think it worth the effort!

I have attached a rough draft of what I would recommend as the Portable Sign Authorization document. I threw it together fairly quickly and it could use a lot of refining, but I think it makes for a good start. I would expect it to be posted with other forms on the City web site to make it readily accessible.

It might be wise to mention some specific limitations on the authorization documents. I think if you state it in casual language it can be clear that it is a guideline and that the Code should be referenced for actual language. The main items I'd consider mentioning are how signs must be free standing (not attached to poles or to trees), are limited to one or two per frontage (depending on zone and what is decided for the Code language), and that they must be taken down every night. I think those are the three areas that would not be obvious to everyone. Of course, the other one is that you need the property owner's approval, but the mere presence of the form itself should make that clear.

I hope this helps with making for a more workable Code!

Robert Soppe
Computer Problem Solvers
RS@CompProbSolv.com
(503) 538-5495

Portable Sign Authorization

(A copy must be posted on any sign placed in the public right-of-way)

Sign owner/responsible party name:

Phone number:

E-mail address (Optional):

Address of location where the sign will be placed in the public right-of-way:

Start date of sign placement:

End date of sign placement (can be left open):

(For C-3 or C-4 zone) Hours of operation of the establishment that is being advertised on the sign:

Name of property owner (or his designee) of the location where the sign will be placed authorizing the placement of the sign:

Phone number or e-mail address of person granting the authority to place the sign:

Signature authorizing the placement of the sign:

Date signed:

Note: signing above states that you are either the property owner at the location where the sign will be placed or have been designated with approval authority by the property owner. This approval is granted for the dates and times shown on this document but may be revoked at any time by the signatory by notifying the sign owner or responsible party listed above.

Signs placed in the public right-of-way have specific requirements which are listed in Newberg Development Code section 15.435.110. Some of the Code limits include size, placement, hours displayed, and number of signs. Signs not in conformance of the Code may be confiscated. The complete details of the code are available at newbergoregon.gov or at Newberg City Hall.

Steve Olson

From: Robert Soppe <rs@compprobsolv.com>
Sent: Wednesday, January 28, 2015 2:56 AM
To: Steve Olson
Subject: Additional (final?) recommendation on sign ordinance revision

Steve:

I've spoken with some more local residents and would like to revise what I recommended before. The change from my last recommendation is in item 2 below. The following is what I would recommend for consideration:

I propose the following as 15.435.110C:

For lots in other zones, two portable signs per street frontage may be allowed in the public right-of-way provided:

1. The standards of subsection B above shall be met with the exception of subsection (B)(6).
2. Signs may be displayed between the hours of 6am and 10pm on Mondays, Tuesdays, and Wednesdays, and any time between 6am on Thursdays until 10pm on the following Sunday. In addition, no sign may be displayed for more than 4 consecutive days.
3. Any sign installed or placed in the public right-of-way within these zones not in conformance with subsection (B)(7) above shall be forfeited to the owner of the property abutting the right-of-way and is subject to confiscation by said owner.

It was suggested to me that it would put an unreasonable burden on a garage sale operator to require the removal of their signs every night. Considering that garage sales almost always run on weekends, it seemed a fair compromise to allow the signs to be left up on Thursday, Friday, and Saturday nights.

It may be clearer to list the allowed times as follows:

2. Signs may be displayed only during the following hours:

Monday: 6am to 10pm
Tuesday: 6am to 10pm
Wednesday: 6am to 10pm
Thursday: 6am to Midnight
Friday: All day
Saturday: All day
Sunday: Midnight to 10pm

In addition, no sign may be displayed for more than 4 consecutive days.

Robert Soppe
Computer Problem Solvers
RS@CompProbSolv.com
(503) 538-5495

Steve Olson

From: Martha Messa <messa.or@frontier.com>
Sent: Friday, December 19, 2014 8:57 AM
To: Steve Olson
Subject: Temporary signage

Mr. Olson,

For many years as we have navigated our way through Newberg we have lamented the proliferation of temporary signs, sandwich boards, stake signs, flags and banners. Now I understand that the Planning Department is examining whether to relax signage ordinances further and allow even more temporary signage. Oh, dear. Why have we allowed Newberg to look so trashy in the first place and why would we want to exacerbate that appearance?

This area is trying to promote itself as a premier wine destination, yet if you were to travel to the Napa Valley region, you would not see the kind of streetscape we are creating here. If we were visitors to Newberg, we would not be enticed to stop and visit. Rather, we would tend to keep moving as the businesses and the town would not hold appeal. We would encourage merchants to invite shoppers with an attractive storefront and permanent signs rather than by spreading unattractive obstacles across the sidewalk.

Like most residents we are interested in having Newberg be a vibrant, attractive and dynamic city. We don't believe that cluttering the sidewalks and streets is going to assist in accomplishing that objective.

Sincerely,

Martha and Ray Messa

Please accept the following as public testimony for the Development Code Amendment regarding temporary and portable signs at the December 11, 2014 Planning Commission meeting.

My comments follow the agenda in order which should make the references easier to identify.

Umbrellas: I think that it would be ill-advised to exclude umbrellas used in conjunction with outdoor seating from the sign code. If there are reasons to limit the size and quantity of signs in general (and it has been accepted that there are) then it shouldn't matter if the sign is flat or if it is shaped as an umbrella. The visual impact will be similar.

It was suggested by a Commissioner that if there was a problem with an umbrella, he expected that the Code Enforcement Officer could work it out with the owner. I think this is highly unlikely. The business owner is unlikely to change or remove an umbrella that has already been purchased and installed and is in compliance with the NDC.

Portable signs attached to other than trees and utility poles: I would not have considered the support for a street light to be termed "utility pole" but if that is a generally accepted term for it then my concern is unwarranted.

Consideration should be given as to why there was a prohibition on attaching a portable sign to a utility pole. Would not the same logic apply to attaching it to a pole that supports a sign? If so, then 15.435.090C should be revised to include a sign pole. For example, change "No portable sign shall be attached to a tree or utility pole" to "No portable sign shall be attached to a tree, to a utility pole, or to any other permanent structure" or to "No portable sign shall be attached to a tree, to a utility pole, or to any other permanent pole".

"Permanently affixed": if the Planning Commission has the same interpretation of this term as Staff has, then it needn't be clarified further.

"legal holiday": I think that it was an excellent suggestion by a Commissioner that the holidays be enumerated. I looked at the listing of Federal Holidays at OPM.gov and found this list:

New Year's Day
Birthday of Martin Luther King, Jr.
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Christmas Day

Do these days match with the intent of 15.435.100D? The following are days where flag flying may be much more appropriate and typical than some of the days listed above:

Presidents' Day
Peace Officer's Memorial Day
Armed Forces Day
Flag Day

I suggest that the specific days should be listed and that the Commission should agree on exactly which days are appropriate.

Sign permit; maximum size: I suggest that you ask Staff how large of a sign could be permitted under the proposed rules for some of the larger lots in town, such as the large car dealers or Fred Meyer's. I suspect that they could be fairly large.

I don't think that it is clear that the 40 square foot limit (15.435.090B2) still applies under the sign permit program. The proposed 15.435.105C2 should include either an explicit size limit or a statement such as: "Signs under the sign permit program may not exceed the size limitations of 15.435.090B and 15.435.100".

Free speech: I raised the issue regarding the sign criteria based on the report of the committee. They recommended that those five items would be the criteria, not the coordination of them. I have no concern about free speech issues with the proposed text (15.435.105C3).

"Clear area": Staff mentions that the standard "could be confused with the 'clear area' definition related to aviation". I think the use of the word "confused" is incorrect here. The online version of the NDC explicitly states that this IS the definition! Browse to 15.435.110B3 and point at the highlighted "clear area" and it will pop up the following text:

"Clear area" means a land area required to be clear of obstructions per FAA regulations for airports and airspace.

This is the definition also found at 15.05.030.

I believe that Staff's interpretation of "clear area" illustrates very well that it IS unclear. I must repeat my concern that this allows a sign to entirely block one sidewalk at a corner as long as it allows the clear area on the other sidewalk. I don't believe that this is appropriate or intended.

“Nonbusiness hours”: Staff raises the question of whether not this needs to be clarified. I think that it certainly needs clarification regarding which business’ hours are being referenced. Is it the business where the sign is located or the business that is being advertised on the sign?

Property owner granting permission: While I think that the language “shall grant permission” is clear when taken in full context, clarification would be very simple and desirable. As long as you are revising the Code, the opportunity should be taken to make it more understandable. A simple change would be to change “shall grant permission” in 15.435.110B7 “has granted permission”. Staff has provided a reasonable alternative (subject to my comments below).

I believe that there is a very significant problem in that Code that I had not noticed before. As it stands now, the Code reads:

The property owner abutting the right-of-way shall grant permission for any sign, other than a public sign, that is placed within that right-of-way fronting the property owner’s lot.

The problem arises when one looks up how the NDC defines “public sign”:

“Sign, public” means any sign that is placed within public right-of-way by or under direction of a governmental agency.

By definition, ANY sign placed in the public right-of-way is a “public sign”. Such a sign would NOT require the property owner’s permission. I suspect that what was intended in 15.435.110B7 was to exempt only the signs placed under the direction of a government agency.

Permission for signs outside C-3 and C-4 zones: There are numerous issues here that are significant enough that they really do need to be addressed actively. I have yet to hear any argument or opinion that property owners outside of C-3 and C-4 zones should not have the same right as others to prohibit a sign in front of their property. Staff is correct that changing “6” to “7” is an effective way to resolve this. I would suggest that it would be more appropriate to change the “6” to “8” unless there is a good argument to exclude 8:

If more than one sign is located in the right-of-way fronting one lot, all signs may be forfeited as per subsection (E) of this section.

I would expect that this rule is just as appropriate in the non-C-3/4 zones as it is within them.

If it is agreed that all 8 standards should be met, a better solution may be to change 15.435.110C2 to: “The standards of subsection (B) of this section are met”. With this change, if subsection (B) is changed in the future, C2 doesn’t have to be revised.

Garage Sale, etc. signs: I believe that my comment here was misinterpreted based on Staff’s response. I certainly recognize that these signs cannot be treated any differently than other similar signs. I was using them as examples of signs that are prohibited by the NDC but are very commonly observed. I think that the Commission needs to consider carefully if prohibiting them is appropriate.

As I mentioned in my previous testimony, I think it would be valuable and appropriate for the Commission to consider each of pictures that I provided of non-conforming (in my interpretation) signs. Does the Commission agree that they should all be prohibited as shown? If not, then the appropriate Code changes should be considered.

I recently took the following pictures of more signs that I believe violate 15.435.110C (signs in right-of-way outside C-3/4 zones) as an illustration. I am not arguing here whether or not these signs should be allowed. I am only asking that the Commission consider the implications of our current Code.



Sign forfeiting: I agree that allowing the general public to confiscate signs would be inappropriate. I think that Staff's proposed language is a significant improvement. I would suggest, though, that the Commission consider allowing the owner of the property abutting the right-of-way to confiscate the sign. There could be a requirement to hold it for a short period of time (e.g. 3-5 days) to allow the owner to retrieve it.

Consider how the present regulations work. If I own property downtown and I see someone putting a sign on the sidewalk in front of it, I have no legal ability to remove it. I have to contact the City (during the limited business hours) and have the Code Enforcement officer handle it. It seems far more effective and efficient to allow me to remove the sign. After all, my approval was required for its placement. I should be in a good position to claim that the sign is unauthorized.

Thank you again for your consideration of these comments.

Robert Soppe

12/8/2014

FROM ROBERT SOPPE

Notes for Planning Commission 11-13-2014 (Sign Ordinance)

I would like to start my testimony with an attempt to make my position tonight very clear. I am explicitly NOT putting forth an opinion about what signs should or should not be allowed nor how the Code should be changed. What I AM trying to do is to get the Planning Commission and the City Council to impose some clarity and consistency in the Sign Code which has been seriously lacking for a very long time.

When creating or modifying regulations, it seems to me that proper governance includes the following three steps:

- 1) The governing body, with whatever input it deems appropriate, decides what should and should not be permitted
- 2) The body writes and enacts rules that support this decision
- 3) The body directs appropriate staff to enforce the rules

In an effort to assist with the first two steps I have compiled a number of photographs of signs that I believe are in violation of the current code. All of these photos were taken within the last month. I have provided each of you with a copy of these photos. Below each one is a citation of the specific part of the Sign Code that I believe is being violated.

I could have provided MANY more photographs that reach back before the moratorium on enforcement; this is not a new issue.

Please do not take my citations as entirely accurate on whether or not these signs are, in fact, in violation. I may well have misinterpreted the Code. My suggestion is that you look at the photos and consider whether or not the sign should be allowed as shown. If you think that it should then I would suggest that you ask Staff to provide an answer as to whether or not it is in violation. If Staff decides that it is, I would suggest that you consider revisions to the Code to allow it.

As a separate issue, there are a number of areas in the Sign Code that I think need clarification. I'll start with a very easy one. I'll not cite the Code numbers here but will provide them in my written testimony.

15.35.110.3 states that if a sign is on a sidewalk in the public right-of-way downtown, it must "leave a clear area of at least five feet measured horizontally...". I would ask all of you to picture exactly what this is requiring. Is it a five foot distance in all directions around the sign? Is it as Staff suggests required only on one side of the sign? What about a sign at a corner? As I understand Staff's interpretation, a corner sign may block the sidewalk in one direction as long as it allows a clear area on the other. I doubt that this was the intent behind the Code.

To further complicate matters, one can look at how the Code defines "clear area". It is defined as: "... a land area required to be clear of obstructions per FAA regulations for airports and airspace". Does

anyone on the Planning Commission know these FAA regulations and how they would apply to signs on the sidewalk Downtown? I certainly do not. I suspect that this definition was not intended to be applied here, yet that is how the Code reads.

I find myself tonight in an all too familiar position in Newberg. Why don't we just write regulations that are clear and avoid such confusion? You have an opportunity to resolve some of that here.

15.434.110.B6 states that a sign in the public right-of-way "must be removed during nonbusiness hours or hours the adjoining property is uninhabited". Let's first look at "nonbusiness hours". If my business has a sign in front of your business, to which business do the hours apply? Then let's look at "uninhabited". Does that mean when no one is present in the building whether the business is open or not or does it mean, for example, when the property is vacant, as in not rented?

15.435.110E states that signs in the public right-of-way that are not in conformance with the code "shall be forfeited to the public and subject to confiscation". I have asked both the previous Planning Director and the present City Attorney about this statement. In particular, since I am a member of the public to which the sign is forfeited, do I have the right to confiscate it? Neither gave an answer that clarified my right. Why don't we just avoid such questions and make the Code clear?

15.435.110C regards signs in the public right-of-way in zones other than the C-3 and C-4 zones. This would include all areas outside of the Downtown area. According to this part of the Code, if I want to place a sign in the right-of-way in front of your house, I explicitly do NOT need your permission, though I do need a permit from the City. Staff has worked around this issue by making a policy decision that such permits will not be issued.

The Commission should consider if such a policy should be a matter for Staff to decide or if is the City Council's domain. If the Council or Planning Commission feels that such signs should not be allowed, then it could eliminate 15.435.110C altogether. If the Council or Planning Commission feels that they should be allowed, it could offer some guidance for the standards of approval for such a permit. If the Council or Planning Commission feels that the property owner's approval should be required, only one character in this part of the code needs to be changed as Staff noted.

Other signs that frequently violate this part of the code are Garage or Yard Sale signs and also Real Estate signs. Because of the time of year when I took these photos, I don't have examples of either. I don't doubt that all of you have seen such signs on utility poles or on planter strips outside of Downtown, none of which is allowed. I suggest that you consider if such a prohibition is appropriate.

15.435.090C states that portable signs shall not be permanently affixed to any structure or to the ground. I would question how clear the words "permanently affixed" are. For example, I ask that you look at the last photograph that I have provided. In particular, look at how the lower sign is attached. Is it "permanently affixed"?

The same code states that portable signs shall not be attached to a tree or to a utility pole. I noted instances where signs were attached to street lights and to sign poles. I suggest that the Commission should consider if those should be treated the same as trees or utility poles.

15.435.110B7 states that portable signs in the public right-of-way in Downtown must have the permission of the property owner. Our previous City Manager stated to me that if a property owner did not object to the City about the placement of a sign in front of his lot, it was considered that he "granted permission". I would suggest that the Commission consider if the lack of objection should be accepted as granting permission.

Another part of the code states that if there is more than one sign in the right-of-way in violation of the code, all of the signs are forfeited. That seems like an open invitation for me to place a cheap sign next to your otherwise compliant sign to allow both to be forfeited.

The proposed changes include exempting "umbrellas used in conjunction with outdoor seating" from the Sign Code. At least one Council member had serious reservations about this exemption. I suggest that you consider the logic of allowing an entire umbrella (or series of umbrellas) to be covered with signs that can far exceed the number and area that would otherwise be allowed.

Lastly, I would like to address the issue of enforcement or, more specifically, the lack of it. I raised this issue most recently before the Council and Staff provided a response to it in your packet for tonight. While I won't disagree with what was provided in the response, it misses the much larger issue that I raised. My issue was not with the lack of enforcement during the moratorium but the many ears that preceded it. One need only look at the political signs that remained in place after the moratorium was lifted to see how strongly the Code has been enforced since then.

I would like to summarize the points on which I think that the Planning Commission should take action.

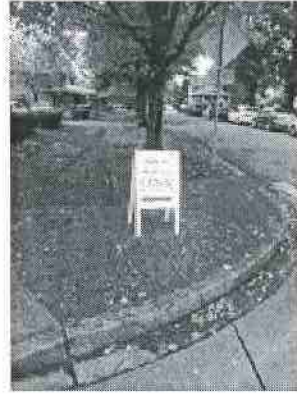
- 1) Consider if any of the signs in the photos should be allowed. If so, ask Staff if they are actually in violation and what Code changes are needed to allow them.
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- 3) Rewrite 15.434.110.B6 to clarify "nonbusiness hours" and "uninhabited".
- 4) Rewrite 15.435.110E to clarify what it means to forfeit a sign to the public and who can confiscate it.
- 5) Rewrite 15.435.110C to clarify whether or not signs should be allowed in the public right-of-way other than downtown. If they should be allowed, consider whether or not the property owner should have the same approval authority as the owners in the C-3 and C-4 zones and provide some guidelines or criteria for the approval of such signs.

- 6) Rewrite 15.435.090C to clarify if a portable sign may be attached to another sign (public or private), to a light pole, or any other permanent object.
- 7) Rewrite 15.435.090C to clarify what "permanently affixed" means.
- 8) Rewrite 15.435.110B7 to require explicit permission by the property owner.
- 9) Consider whether the Code should allow Garage or Yard Sale signs in the public right-of-way outside of Downtown.
- 10) Consider whether the Code should allow Real Estate signs in the public right-of-way outside of Downtown.
- 11) Consider if 15.435.110B8 is appropriate in allowing all signs to be forfeited when there is more than one in the right-of-way.
- 12) Consider the quantity and size of signs that will be permitted if umbrellas used in conjunction with seating covered with advertising are exempted from the Code.

Examples of signs that appear to be in violation of the Sign Code (specific Code listed under each):



15.435.110C1



15.435.110C1



15.435.090A



15.435.110B6



15.435.090A



15.435.090C

15.435.110C1



15.435.110B6



15.435.090A



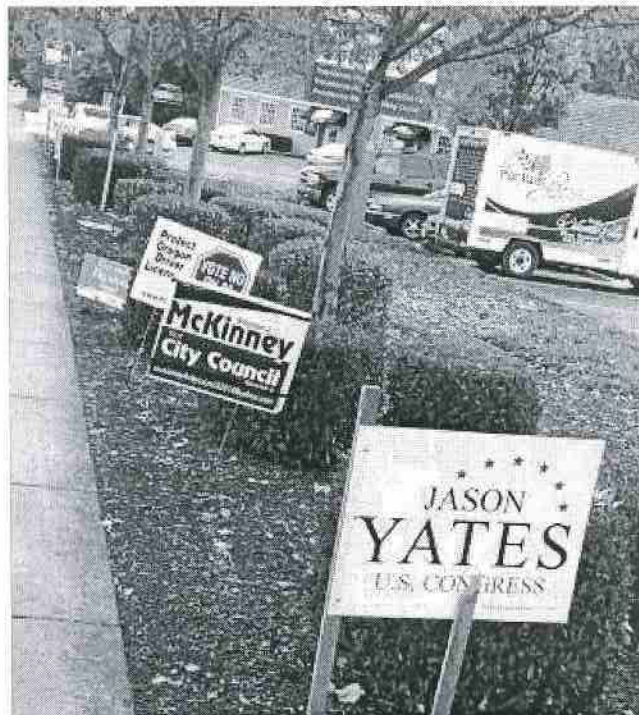
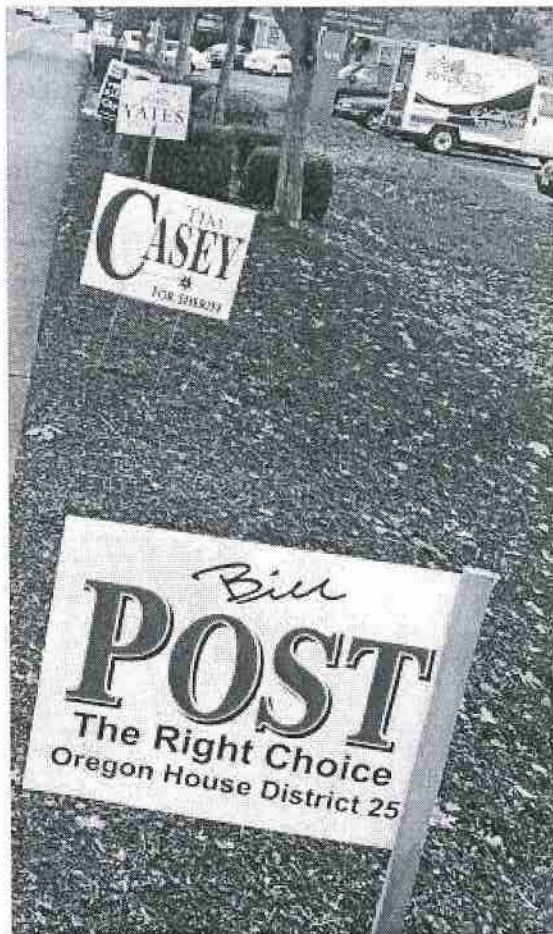
15.435.110B6



15.435.110B6



15.435.110B6



15.435.090A (these two pictures connect)



15.435.110B6

15.434.110B3



15.435.090C

15.435.110B6

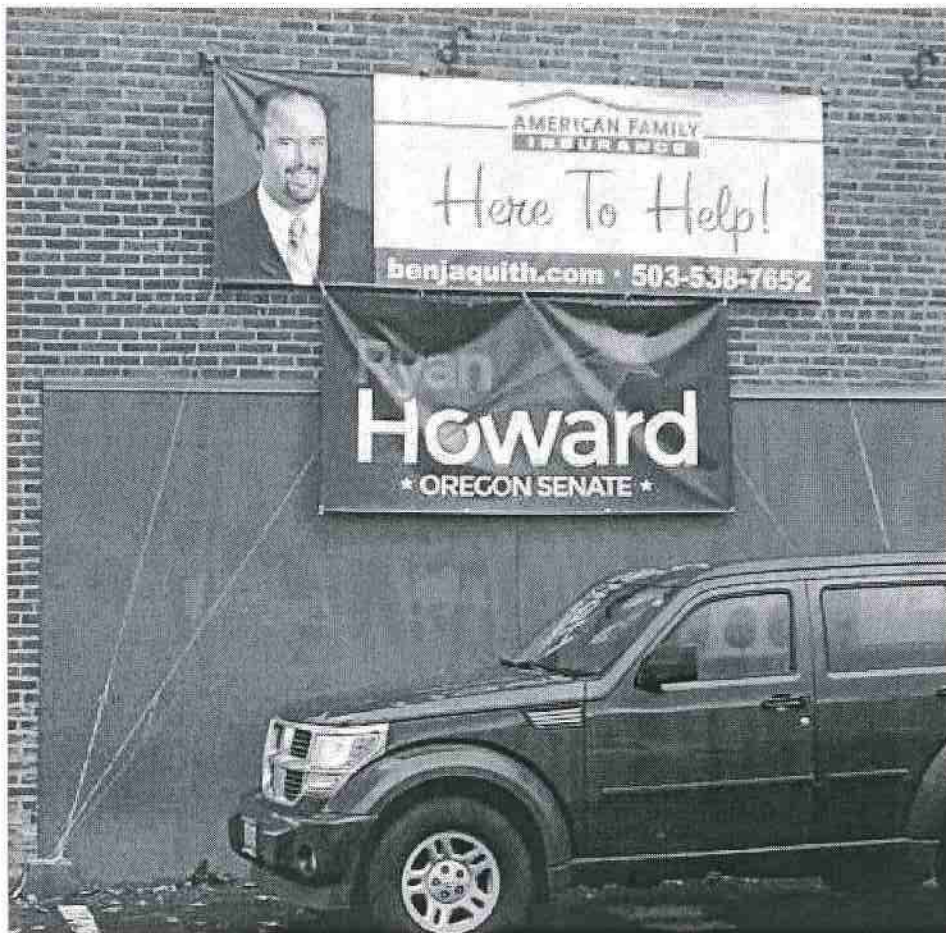


15.435.110B6



15.435.110B6

15.434.110B3



15.435.100B

(Lower sign appears to exceed 12 sq. ft. limit but not certain)

(Is the lower sign "permanently affixed to any structure or the ground"?)

NMC Code References for Photos:

15.435.090A: Portable signs, one per street frontage (Note: 14.435.100B allows two more during election events)

15.435.090C: Portable signs shall not be attached to a tree or utility or pole and shall be designed to be removed quickly.

15.434.110B3: Signs within the public right-of-way must leave a clear area of at least five feet measured horizontally

15.435.100B: Temporary signs for events, Election Event, additional signs may not exceed 12 square feet

15.435.110B6: Signs within the public right-of-way in C-3 and C-4 zones must be removed during nonbusiness hours or hours the adjoining property is uninhabited.

15.435.110B8: Signs within the public right-of-way in C-3 and C-4 zones are limited to one sign per fronting or all signs may be forfeited

15.435.110C1: Signs within the public right-of-way other than C3 and C-4 zones require sign permit affixed to the sign

07-21-14 City Council Minutes Exhibit A Robert Soppe Testimony

Newberg City Council 7/21/2014 meeting

I would like to address some issues that are in the recommendations before you tonight as well as some that are not. Most of my concerns have to do with signs in the public right-of-way. I urge you to give careful consideration to all of them.

One concern of mine has to do with the proliferation of free-standing signs in our C-3 zone that are in violation of numerous parts of the Development Code. 15.435.110B3 mandates that they must have a clear area of at least five feet. B5 mandates that they cannot be within 3 feet of a fire hydrant. B6 mandates that they must be removed during non-business hours or when the adjoining property is uninhabited. B7 requires that permission of the property owner abutting the right-of-way is required. B8 mandates that there may be only one sign per property frontage. All of these are frequently violated and little seems to be done about it.

Virtually all of the signs in the public right-of-way outside of the C-3 zone are in violation of the Code, yet they are allowed. The number of these is easily in the hundreds annually. Please think carefully about this. If you have ever seen a sign in the planter strip between the sidewalk and curb, if it not in the C-3 zone, it is almost certainly in violation of our code. I am not arguing for or against the current code, only that it should reflect the intent behind the code and should be enforced. Nothing in the recommendation appears to address this.

I recognize that this Council issued some directive to staff about suspending enforcement of these codes about a year ago. While the issues I have just cited appear to have gotten much worse since that directive, the issues have existed for years before that with little consequence. Mr. Olson mentioned "a return to enforcement". I am very curious to when he is referring as it goes before any time I can remember.

I think this raises a key issue that the Council should address before making any revisions to the Code. That issue is whether or not there is an honest desire and plan to enforce the Code after the revisions are approved. I hope that there will be and that this will not be a wasted effort.

One of the frequently-violated Codes that I just cited is that there must be a clear area of at least five feet around a portable sign in the public right-of-way. It is difficult to know exactly what that means as "clear area" is defined in our code only having to do with FAA regulations. I think that a common reading of that term would be an unobstructed area around the sign that extends for five feet. If my common reading of this is accurate, I would suggest that there are very few places that such a sign

07-21-14 City Council Minutes Exhibit A Robert Soppe Testimony

could be placed in the C-3 zone. I would suggest that this particular item be written to accurately describe what is intended.

The proposed changes allow more signs in the C3 zone that are presently allowed. I would encourage all of you to walk around downtown and ask yourself if we really don't have enough signs on the sidewalk.

The proposed changes include review criteria for sign permits. Some of the criteria are colors, style, and font. I would, of course, defer to the opinion of the City Attorney, but I suspect that those are legally considered content and may not be valid criteria.

The section on Education, Enforcement, and Maintenance seems reasonable, but recent experience raises the concern of how well it will be implemented. The City issued a letter in April of this year regarding the Newberg sign ordinances. The letter contained two very significant factual errors with regard to our Code. I hope that the education program that is proposed here is more accurate.

My last issue is one that I have raised numerous times, including to this Council and to the Sign Committee, but there appears to be no one else concerned about it. With the current Code, if I want to place a sign in the public right-of-way in front of your house, I don't need your permission. While I do need a permit from the City, your approval is not an explicit requirement. Is it really the Council's view that residential property owners should not have a say over what signs are placed in front of their property? I would certainly like that authority with my property and am amazed that it appears to be of so little concern to Newberg decision makers. As I have testified before to this Council, it would take the change of a single letter in the Code to resolve this.

Thank you for your consideration of my comments.

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- 8) Rewrite 15.435.110B7 to require explicit permission by the property owner.
- 9) Consider whether the Code should allow Garage or Yard Sale signs in the public right-of-way outside of Downtown.
- 10) Consider whether the Code should allow Real Estate signs in the public right-of-way outside of Downtown.
- 11) Consider if 15.435.110B8 is appropriate in allowing all signs to be forfeited when there is more than one in the right-of-way.
- 12) Consider the quantity and size of signs that will be permitted if umbrellas used in conjunction with seating covered with advertising are exempted from the Code.

Examples of signs that appear to be in violation of the Sign Code (specific Code listed under each):



15.435.110C1



15.435.110C1



15.435.090A



15.435.110B6

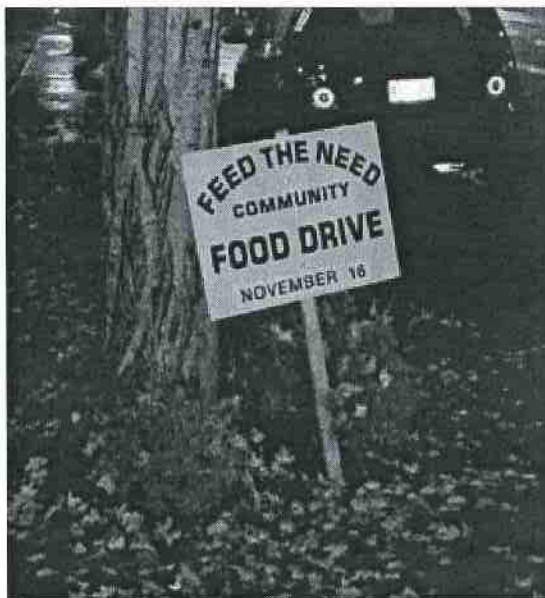


15.435.090A



15.435.090C

15.435.110C1



15.435.110B6



15.435.090A



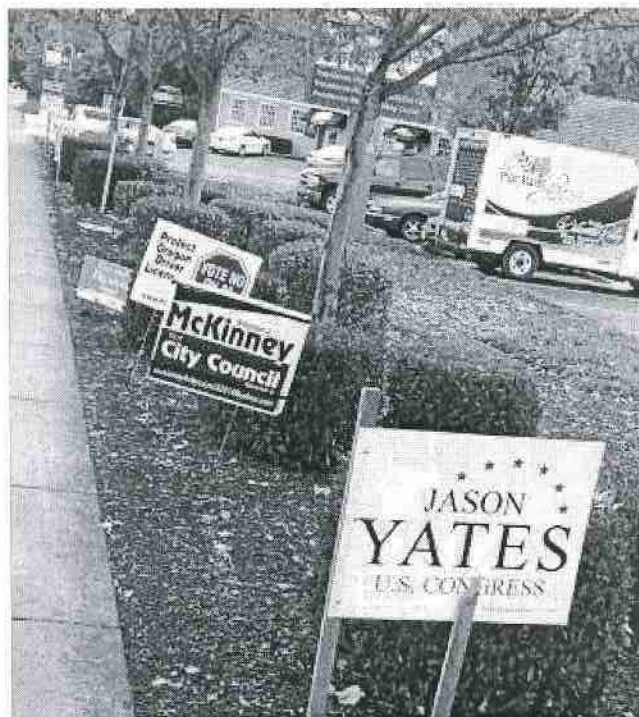
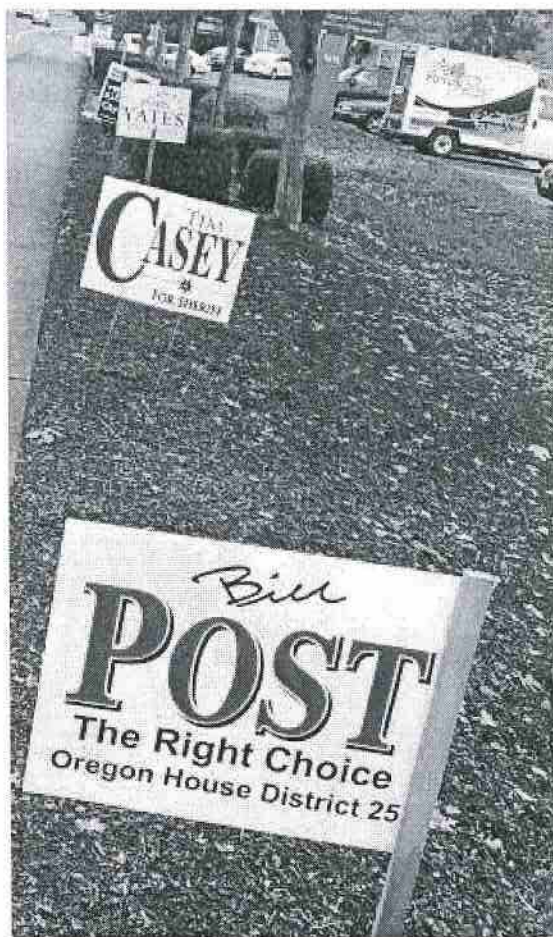
15.435.110B6



15.435.110B6



15.435.110B6



15.435.090A (these two pictures connect)



15.435.110B6

15.434.110B3



15.435.090C

15.435.110B6

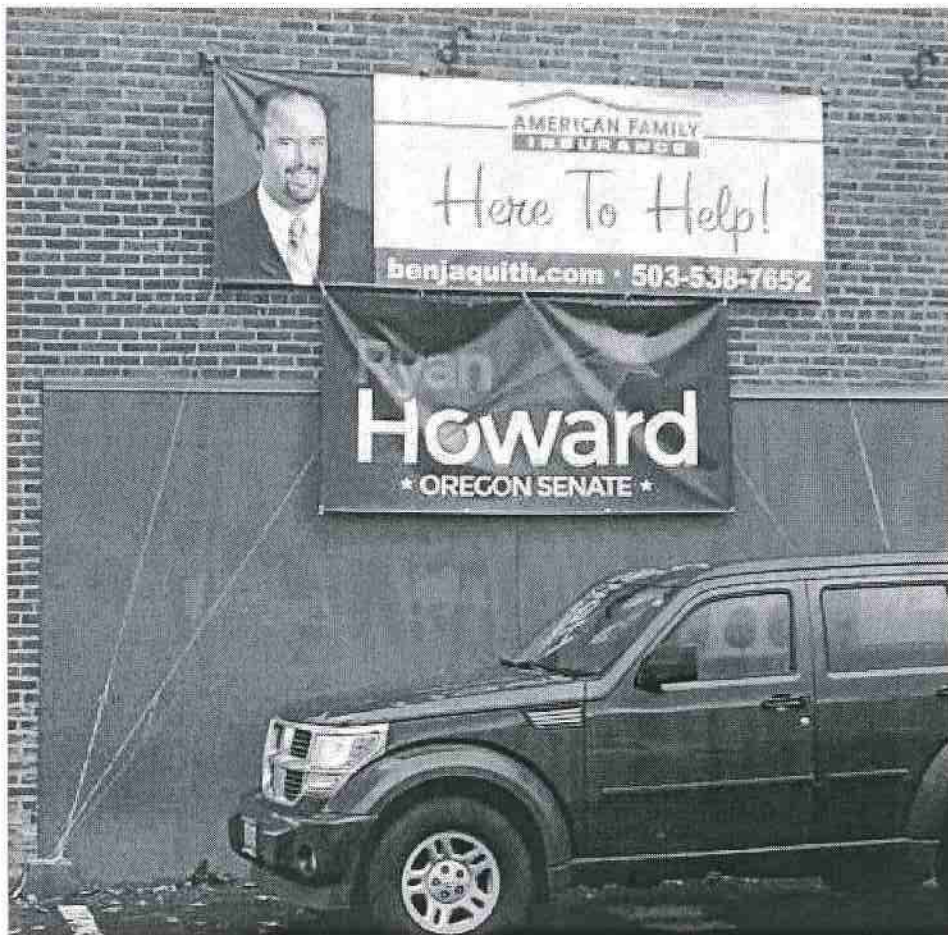


15.435.110B6



15.435.110B6

15.434.110B3



15.435.100B

(Lower sign appears to exceed 12 sq. ft. limit but not certain)

(Is the lower sign "permanently affixed to any structure or the ground"?)

NMC Code References for Photos:

15.435.090A: Portable signs, one per street frontage (Note: 14.435.100B allows two more during election events)

15.435.090C: Portable signs shall not be attached to a tree or utility or pole and shall be designed to be removed quickly.

15.434.110B3: Signs within the public right-of-way must leave a clear area of at least five feet measured horizontally

15.435.100B: Temporary signs for events, Election Event, additional signs may not exceed 12 square feet

15.435.110B6: Signs within the public right-of-way in C-3 and C-4 zones must be removed during nonbusiness hours or hours the adjoining property is uninhabited.

15.435.110B8: Signs within the public right-of-way in C-3 and C-4 zones are limited to one sign per fronting or all signs may be forfeited

15.435.110C1: Signs within the public right-of-way other than C3 and C-4 zones require sign permit affixed to the sign

David Beam

From: Steve Olson
Sent: Monday, December 01, 2014 8:19 AM
To: David Beam
Subject: FW: Planning Commission testimony on signs
Attachments: Notes for Planning Commission 11-13-14 (Sign Ordinance revisions) as submitted.docx

David, here are Robert Soppe's written comments about signs. This will need to be attached to the staff report, and will help us pull together draft code changes for the PC to consider.

Steve Olson, AICP : Interim Planning & Building Director : City of Newberg
(503)537-1215 : steve.olson@newbergoregon.gov

From: Robert Soppe [<mailto:rs@compprobsolv.com>]
Sent: Thursday, November 20, 2014 11:17 AM
To: Steve Olson
Subject: Planning Commission testimony on signs

Steve:

I've attached a copy of my notes from my 11/13/2014 testimony at the Planning Commission meeting. I have also submitted a copy to Nicole for the record.

There is a 12-point summary at the end (before the pictures) listing the issues that I think need to be considered. While that may sound like a lot of revising, I don't think it is as bad as it may appear. The most complicated part is likely to be encountered if the PC or Council feels that any of the non-compliant signs should be allowed.

With the hope that it assists you with this process, I'm providing some comments about how the Code can be revised. Feel free to use or discard any of them as you see fit. These do not address all of the points I raised.

I want to be clear that I am not requesting a response to my comments in this email. I'm trying to be constructive here and don't want to add a burden to your busy schedule. Your time is valuable to the City!

- 1) 15.35.110.3 ("clear area" around signs in the r-o-w): I think you have the correct general idea here (allow a 5' space for pedestrians) but it should include a comment about ALL adjacent sidewalks. A diagram (as you suggested) could also be useful to illustrate how it relates to the curb (should it be spaced back a bit especially where parking spaces are not designated?) and also to the designated parking space lines. I do think that the text should stand on its own, though. The diagram can illustrate what the text means, but the text should be complete. Of course, "clear area" should be changed to some other phrase to separate it from the present Code definition of it.
- 2) 15.435.110E (forfeiting a sign): If it is not intended to permit any member of the public to confiscate the sign (I am still unclear if this is the case or not), change "to the public" to "to the City" and after "to confiscation" add "by a City employee or designee". I'll add some discussion to this below about the property owner.
- 3) 15.435.110C (signs in r-o-w other than C3 and C4): If it is the wish of the Council (this should NOT have been a staff decision in my view!) that the permits will not be allowed, then drop this part of the Code altogether. Careful consideration should be given about how to deal with the MANY signs (typically Garage Sale and Real Estate signs) that violate this part of the Code.
- 4) 15.435.090C (portable signs attached to trees and utility poles): consider replacing "a tree or utility pole" with "a tree, utility pole, sign, light pole, or other similar object".

- 5) 15.435.110C7: I could understand Commissioner Smith's misunderstanding about the phrase "property owner abutting the right-of-way shall grant permission...." even though the appropriate meaning is clear when taken in context. Nonetheless, why not make it clear without the context? In particular, change "shall grant" to "has granted" and I think it is resolved.
- 6) 15.435.110E (all signs forfeited): I think there is an easy fix for this. If it is a requirement that the abutting property owner give permission for the sign, then he is the "authority" of which sign should be allowed. Rather than confiscate all signs, contact the property owner to identify the one that should be left. If the property owner doesn't respond in a reasonable length of time, then all signs can be taken by the City.

There were a few other areas where I wanted to add some comments. The first has to do with the issue of forfeiting signs and the City's involvement in that. If I am a property owner downtown and someone places a sign in front of my property in the r-o-w without my permission, shouldn't I be allowed to confiscate it? A reasonable requirement could be that I hold it for some short period of time (3-5 days, for example) to allow the owner to retrieve it from me, after which time I may dispose of it as I wish. This seems MUCH more efficient than the present system where I need to contact the City to have them remove it. As I read the present Code, it is not clear that this is allowed. I wouldn't have this take the place of the City's authority to remove the sign but an addition to it.

The next issue has to do with the concept of "public property", a phrase often used in this context. It is unclear to me whether the sidewalk in front of a property is part of the lot itself (though subject to r-o-w restrictions and obligations) or separate from it (or whether this is consistent through the city). If it is the former, then "public property" seems to be a difficult name to place on it. If it is the latter (sidewalk is NOT part of the lot) then disregard this paragraph altogether!

I think the issue of umbrellas is an important one and expect that there will be a serious division of opinion on it. If there is a significant push to exempt them I would consider a compromise where the umbrella is divided into sign and non-sign parts. For example, the sort of umbrella that is an inverted cone with a vertical strip surrounding the bottom edge (hanging straight down as the lowest part), the cone and strip could be considered as two different elements. If the printing is only on the strip, then that part alone is a sign (with the attendant size and other restrictions) and not the larger conical part. One could also look at the conical part of the sign and divide it into the triangular "slices" that are created by the supporting framework. Only the "slices" that have printing on them would be regulated as a sign and the rest is just an umbrella.

The bottom line is that I don't think it is at all reasonable or practical to expect property owners to be "reasonable" and not exploit the use of umbrellas (over seated areas) as an opportunity for a large (non-) sign. If the Code allows it, people should be allowed to do it.

Some other day we'll have to discuss this whole idea of a business using the sidewalk as a seating area. I have issues with the idea that someone has more of a right to the sidewalk in front of their business than I do. We'll leave that for later!

The last issue has to do with the Chair's comment about excessive signage on umbrellas. He said something about how if umbrellas were exempted from the Sign Code as the Committee recommended (I'm going from memory here so I may not be entirely accurate) and there was an umbrella with excessive signage, he expected that the Code Enforcement officer could deal with it. I expect that you see how this is completely unworkable. If the umbrella is not in violation of any Code, what authority does the CE officer have to persuade the owner to do anything at all? Also, consider the position of the property owner. The umbrella is in place and paid for and the City wants it removed? It is not as if some of the signage could be "erased"!

Thank you for your consideration of these issues. I was serious about not requiring a response. You have plenty to do and I would suggest only responding if you have a need for more details or a discussion will benefit you in this process.

Robert Soppe
rs@compprobsolv.com
(503) 538-5495



RESOLUTION No. 2014-3161

**A RESOLUTION ACCEPTING THE TEMPORARY AND PORTABLE SIGN
AD-HOC COMMITTEE'S RECOMMENDATIONS PRESENTED IN EXHIBIT
A REGARDING CHANGES TO TEMPORARY AND PORTABLE SIGNAGE
WITHIN THE CITY OF NEWBERG.**

RECITALS:

1. On October 7, 2013, the City Council adopted Resolution No. 2013-3080, establishing a Temporary and Portable Sign Ad-Hoc Committee. The committee's charge is as follows: "The committee will make a determination as to what, if any, changes to the current development code regarding temporary and portable signs may be desirable. If the committee determines changes may be warranted, the committee is to draft recommended development code amendments for consideration of adoption by the city council. Such recommended changes shall meet two criteria: improve the likelihood the intended message will reach its target audience; while at the same time, meet the spirit and intent of the purpose of the sign regulations as stated in Section 15.435.010 of the Newberg development code." The committee was formed in response to concerns expressed by members of the business community regarding the current sign code for temporary and portable signs.
2. The purpose of the city's sign regulations per the Newberg development code is as follows:

15.435.010 Purpose.
A. The citizens of Newberg desire a clean, attractive, economically vibrant, and safe community. Well-planned and constructed signs can contribute to the community's success by directing and informing the public about commercial and other activities, and by creating attractive commercial and other neighborhoods. On the other hand, unregulated signage can create clutter, distractions, and hazards.
3. The committee began meeting in November 2013 and continued to do so approximately every two weeks. The committee examined the current sign code regarding temporary and portable signs, toured the city to see how the code is being implemented "on the ground", conversed with various business owners (included the owners of the three largest auto dealerships) regarding the implementation of this type of signage, and explored options on how the city may improve temporary and portable signage in a way that will benefit local businesses as well as the community in general.
4. Exhibit A describes the final recommendations from the committee to the council. Some of the recommendations include changes to the Newberg Development Code.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The Newberg City Council accepts the Temporary and Portable Sign Ad-Hoc Committee's report as described in Exhibit A.

Resolution 2014-3161 Exhibit A

**Newberg Temporary and Portable Sign Ad Hoc Committee
Recommendations to Newberg City Council
July 21, 2014**

1. Develop a downtown wayfinding system

The city of Newberg should develop a wayfinding sign system for the downtown area (C-3 zone). The purpose of the system would be to help visitors to the downtown to locate and discover public and private destinations. An ad hoc committee of the Newberg City Council should be created (members appointed by the Mayor) and the committee's goal should be to develop recommendation for council's consideration of adoption regarding the general appearance of the signs, where they are to be located, how the sign system shall be installed and maintained (both private and public operators should be considered), and any other goals that the council feels is necessary to ensure that the wayfinding sign system will be an attractive and useful addition to the city's historic downtown area. The committee should coordinate with other entities within the community with existing and/or intended wayfinding signage entities (CPRD, Cultural District, Chamber of Commerce, etc.) to ensure all such signage achieves a coordinated appearance.

Any potential wayfinding system that may be adopted should be intended to augment signage that is currently allowed and be an additional option to the current sign code.

2. Develop a sign permit program

The committee heard from some representatives of the business community that current regulations regarding portable and temporary signs are too restrictive. To address this concern, the committee recommends the city develop a sign permit program that would allow additional temporary and portable signage with a city approved sign plan. The program would include regulations and a review process that would ensure that such signage has an attractive, coordinated, and maintained appearance.

The following general criteria would be used to develop specific code language for the proposed sign permit program:

- 1) Multiple signs allowed by approved sign plan and permit
- 2) Time: up to one year. Request to extend existing, approved sign plan would be quick and easy.
- 3) Number: C-2 zone: 1 per 100 feet of street frontage. C-3 zone: 1 per 15 feet of street frontage, with a maximum of 4 signs. Institutional zone: 1 per 100 of street frontage.

At least one per business allowed. Business must have a business license and occupy a discrete space.

- 4) Square footage and size: Total signage for a property will be 1 square foot per 1 foot of street frontage. Maximum allowed for any specific sign will be based on the location of the sign. The farther the distance a sign is from the front property line, the greater size that will be allowed

Resolution 2014-3161 Exhibit A

for a specific sign. For every 10 feet from the property line, the maximum square footage for a sign may be an additional 10 square feet larger. In other words, if a sign is between the property line and 10 feet from the property line, then the sign may be up to 10 square feet in size; if a sign is between the 10 feet and 20 feet from the property line, then the sign may be up to 20 square feet in size, and so on.

- 5) Review criteria for signage in plan:
 - Size
 - Colors
 - Style
 - Font
 - Size appropriate for setback location
- 6) Fee: \$10 for each month a permit is in effect or \$100 per year. Permit application form simple to complete.
- 7) Maintenance: Condition of permit approval would be that the business would maintain signage in good condition. A permit may be revoked at any time the city deems this condition is not being met.

Sign plan applications shall be reviewed and approved by the city's planning division. Plan approval/disapproval will be based on a set of criteria that is intended to achieve attractive, coordinated portable signage on a property. An appeal to the application decision may be made to a hearing officer appointed by the city manager.

3. Pennants, streamers, and inflatable objects

The use of pennants, streamers and inflatable objects as signage are not addressed in the development code. Therefore, the committee recommends that Section *15.435.100 Temporary signs for events* of the Newberg Development Code be amended as follows (NOTE: amendments are double underlined; code language deletions are ~~strikeouts~~):

15.435.100 Temporary signs for events.

In addition to the portable signs otherwise permitted in this code, a lot may contain temporary signs in excess of the number and size allowed by NMC 15.435.090 during events as listed below- Pennants, streamers, and inflatable objects may be used during these events.

A. Grand Opening Event. A grand opening is an event of up to 30 days in duration within 30 days of issuance of a certificate of occupancy for a new or remodeled structure, or within 30 days of change of business or ownership. No lot may have more than one grand opening event per calendar year. The applicant shall notify the city in writing of the beginning and ending dates prior to the grand opening event. If there are no freestanding signs on a frontage after the grand opening event, one of the

Resolution 2014-3161 Exhibit A

temporary signs may remain on the property for the 60 days immediately after the end of the grand opening event. A temporary electronic message center may be used during a grand opening event.

B. Election Event. An election event begins 90 days prior to and ends 14 days after any public election. During this event a lot may contain up to two additional temporary signs, not to exceed 12 square feet in total area for both signs. These signs shall not be located in the public right-of-way.

C. Other Events. A lot may have two other events per calendar year. The events may not be more than eight consecutive days in duration, nor less than 30 days apart. A temporary electronic message center may be used during the event.

D. Flag Displays. One flag display is permitted on each street frontage. An unlimited number of displays is permitted on any legal holiday or Newberg city council designated festival. [Ord. 2731 § 3, 10-18-10; Ord. 2499, 11-2-98. Code 2001 § 151.599.]

Penalty: See NMC 15.05.120.

4. Education/Enforcement/Maintenance

Efforts by the city regarding the enforcement, education, and maintenance of temporary and portable signage is a critical component to achieving the goal of a high quality-of-life in the community. The city should dedicate the necessary resources as feasible to ensure adequate enforcement, education, and maintenance of signage within Newberg. The city of Newberg should develop proposals that improve existing mechanisms as well as create new mechanisms that will help ensure the adherence and enforcement to the temporary and portable sign development codes. Potential solutions should include the development of public handout materials that explain the temporary and portable sign codes as simply as feasible and adoption of some of the other recommendations mentioned in this memo. The format of such materials should use clear language in layman terms and simple graphics to help convey the information. Finally, the city should seek out partners to assist with this issue, such as the Chehalem Valley Chamber of Commerce and the Newberg Downtown Coalition.

5. Flags

The committee has found that there may be insufficient language in the development code regarding the difference between a flag display and flags as portable signs (e.g. teardrop style flags). Therefore, the committee recommends the following amendments to the Newberg Development Code. (NOTE: amendments are double underlined; code language deletions are ~~strikeouts~~):

15.435.100 Temporary signs for events.

In addition to the portable signs otherwise permitted in this code, a lot may contain temporary signs in excess of the number and size allowed by NMC 15.435.090 during events as listed below:

A. Grand Opening Event. A grand opening is an event of up to 30 days in duration within 30 days of issuance of a certificate of occupancy for a new or remodeled structure, or within 30 days of change of business or ownership. No lot may have more than one grand opening event per calendar year. The applicant shall notify the city in writing of the beginning and ending dates prior to the grand opening event. If there are no freestanding signs on a frontage after the grand opening event, one of the

Resolution 2014-3161 Exhibit A

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Penalty: See NMC 15.05.120.

Section 15.05.030 Definitions

“Flag display” means one or more flags attached to a permanently affixed single pole.

6. Umbrellas

It is the committee’s understanding that the use of umbrellas in conjunction with outdoor seating under the current temporary and portable sign code has been an issue. The committee feels that umbrellas provide an important service to business patrons as protection from the elements, especially with restaurants. Therefore, the committee feels that such umbrellas, with or without signage, should be exempted from the sign code. The committee recommends the following amendments to the Newberg Development Code. (NOTE: amendments are double underlined):

15.435.020 Applicability and exemptions.

A. All signs placed or maintained anywhere within the city shall comply with the standards of this chapter, with the exception of the following:

1. Public signs.
2. Signs that are required to be placed by law and that are no more than 50 percent larger than the minimum size required by law or, if there is no minimum size specified, signs with lettering height no more than four inches.
3. Signs painted on or attached to windows that do not cover more than 50 percent of the surface of that window.
4. Signs located entirely within a building and not on a window.
5. Signs not legible from the public right-of-way.

6. Umbrellas used in conjunction with outdoor seating.

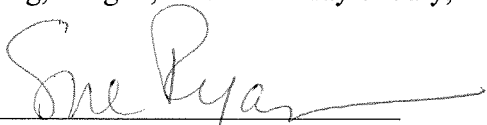
B. If any of the signs listed above require permits under the current edition of the Oregon Structural Specialty Code, the sign shall be placed only following issuance of such permit.

C. Nothing in this chapter shall be construed to allow placement of a sign on a property without the authority of the property owner. [Ord. 2499, 11-2-98, Code 2001 § 151.591.]

2. The Newberg City Council initiates the development code amendment process for proposed changes to the Newberg Development Code as described in Exhibit A, with the following changes:
 - a. The sign permit program in item two only applies to private property and non-public right of way.
 - b. The proposed change in item six to allow umbrella signs was not supported by the Council and was deleted from the code amendment initiation.

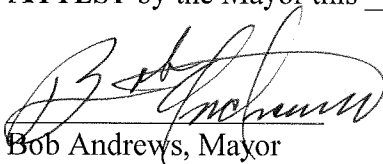
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 22, 2014.

ADOPTED by the City Council of the City of Newberg, Oregon, on the 21st day of July, 2014.



Sue Ryan, City Recorder

ATTEST by the Mayor this 4th day of November, 2014.



Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 8, 2015

Order ___ Ordinance XX Resolution ___ Motion ___ Information ___
No. No. 2015-2784 No.

SUBJECT: An Ordinance amending Chapter 13 of the Newberg Municipal Code to reference utility Master Plans and require permits for connection

**Contact Person (Preparer) for this
Motion: Kaaren Hofmann, P.E., City Engineer
Dept.: Engineering Services Department**

HEARING TYPE: ☒ **LEGISLATIVE** ☐ **QUASI-JUDICIAL** ☐ **NOT APPLICABLE**

RECOMMENDATION:

Adopt Ordinance No. 2015-2784

EXECUTIVE SUMMARY:

Chapter 13 of the Newberg Municipal Code addresses public utilities and services in the City. It works in conjunction with Chapter 15 which is the City's Development Code.

The track changes version of the proposed amendments is attached at Exhibit A. The changes include:

- Referencing that the most recent Wastewater, Water and Storm Drainage Master Plans are incorporated by reference;
- That construction of the City's infrastructure will occur in accordance with said Master Plans;
- Removed sections that might conflict with the Building Code on private laterals;
- Added a policy and purpose section to Chapter 13.15 Water; and
- Added Section 13.15.045 on water connection procedures.

The proposed changes will allow for consistency and transparency in land use and other decisions by referencing the most recent master plans and requiring projects to connect to the City's infrastructure via permit and plans that comply with the Public Works Design and Construction Standards.

FISCAL IMPACT:

There is no fiscal impact to the City.

STRATEGIC ASSESSMENT:

This amendment furthers the City Council's goals to maintain and modernize the City's transportation and utilities infrastructure.



ORDINANCE No. 2015-2784

AN ORDINANCE AMENDING CHAPTER 13 OF THE NEWBERG MUNICIPAL CODE TO REFERENCE UTILITY MASTER PLANS AND REQUIRE PERMITS FOR CONNECTION

RECITALS:

1. WHEREAS, Chapter 13 of the Newberg Municipal Code addresses public utilities and services in the City. It works in conjunction with Chapter 15 which is the City's Development Code.
2. WHEREAS, the proposed changes will allow for consistency and transparency in land use and other decisions by referencing the most recent master plans and requiring projects to connect to the City's infrastructure via permit and plans that comply with the Public Works Design and Construction Standards.
3. WHEREAS, this amendment furthers the City Council's goals to maintain and modernize the City's transportation and utilities infrastructure.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

Chapter 13 of the Newberg Municipal Code is amended as follows:

Section 1. Section 13.10.020 is amended as follows:

13.10.020 Purpose and policy.

This chapter sets forth uniform requirements for users of the publicly owned treatment works (POTW) for the City of Newberg and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403). The objectives of this chapter are:

- A. To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;
- B. To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- C. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
- D. To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;
- E. To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW;
- F. To provide for equitable distribution of the cost of the municipal wastewater system in compliance with the Environmental Protection Agency's requirements;

- G. To assure the financial self-sufficiency of the POTW;
- H. To improve the existing POTW to provide adequate service during peak demand periods;
- I. To reduce inflow and infiltration into the POTW;
- I. To improve the existing POTW to control and eliminate wastewater overflows to the extent practicable and
- J. The most current Sewerage Master Plan and Wastewater Treatment Plant Facilities Plan are incorporated by reference as supporting technical documents.

This chapter shall apply to all users of the POTW. This chapter authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

Section 2. Section 13.0.303 is amended as follows:

13.10.030 Administration.

A. Except as otherwise provided herein, the director shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the director may be delegated by the director to other city personnel.

B. In achieving the objectives of this chapter, it shall be the policy of the city to actively promote the health of the industrial community through accommodation, assistance and cooperation, consistent with the city's responsibility to protect the waters of the state from pollution and to secure the health, safety and welfare of the residents of the community. To that end, this chapter shall be implemented using good business practices, abidance of the CWA and general pretreatment regulations, and best professional judgment; with associated decisions taking all known facts into consideration.

C. This chapter provides for the regulation of direct and indirect contributors to the POTW through the issuance of permits to certain nondomestic users (primarily significant industrial users (SIUs)), and through enforcement activities; assures that existing customers' capacity will not be preempted; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the programs established herein. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.03.]

D. The construction and expansion of the POTW shall be in accordance with the most current Master Plan and Public Works Design and Construction Standards.

Section 3. Section 13.10.070.B.3 is amended as follows:

In any case, the owner or an agent of the owner shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Director. Connection fees and systems development charges for residential, commercial and industrial building wastewater system permits payable to the director shall be in such amounts as provided for in subsection (F) of this section.

Section 4. Section 13.10.070.F.6 is amended as follows:

6. Revenue from wastewater system connection fees as defined in subsection (F)(1) of this section shall be paid into the wastewater fund. Revenue from systems development charges shall be identified by special accounting such that the funds can be used to defray the cost of future wastewater facilities improvements.

Section 5. Section 13.10.070.G is amended as follows:

G. Design/Construction Standards. Plans for all public and private wastewater systems shall be reviewed and approved by the Director prior to construction. The plans shall conform to the requirements of the State Department of Environmental Quality, as well as the City's Public Works Design and Construction Standards. All public and commonly maintained private wastewater systems shall be designed by a registered professional engineer.

Section 6. Section 13.10.070.H is amended as follows:

H. Cleanouts. Cleanouts shall be installed on all new building wastewater systems. The cleanout shall be placed vertically above the flow of the pipe and at a point near the connection of the building wastewater system to the building drain. Cleanouts will also be placed at the connection of building wastewater system to the public system.

Section 7. A new section, Section 13.15.005, is added as follows:

13.15.005 Purpose and policy.

This chapter sets forth uniform requirements for users of the publicly owned treatment, storage, pumping and distribution of water for the City of Newberg and enables the city to comply with all applicable state and federal laws. The objectives of this chapter are:

- (1) Plan and construct a City water system that protects the public health, provides cost-effective water service, meets the demands of users and addresses regulatory requirements;
- (2) Require developers to aid in improving the water system by constructing facilities to serve new development and extend lines to adjacent properties;
- (3) Water lines should be looped whenever possible to prevent dead-ends, to maintain high water quality and to increase reliability in the system;
- (4) Improve the water system to provide adequate service during peak demand periods and to provide adequate fire flows during all demand periods; and
- (5) The most current Water System Master Plan is incorporated by reference as a supporting technical document.

This chapter shall apply to all users of the water system. This chapter authorizes the issuance of water connection permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein

Section 8. A new section, Section 13.15.045, is added as follows:

13.15.045 Water Connection Procedures

A. Permit Required. All new construction shall be connected to the city water system. No

unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public water system or appurtenance without first obtaining a written permit from the director. The permit shall specify the location where the connection (or other approved work) shall be made, the manner of making the connection, the name and address of the owner, and the name of the water system installer who will be doing the work. No permit shall be issued unless the water system to which connection is requested has been accepted as a part of the public water system. No permit shall be issued without payment of all appropriate permit, connection, development and inspection fees, including any delinquent assessments against the owner of the property.

B. As set forth in the Water Distribution System Plan, the City has four water service levels. All development applicants shall be required to connect the proposed development site to the service level in which the development site is located. If the development site is located on a boundary line between two service levels the applicant shall be required to connect to the service level with the higher reservoir elevation. The applicant may also be required to install or provide pressure reducing valves to supply appropriate water pressure to the properties in the proposed development site.

C. Design/Construction Standards. Plans for all public water systems shall be reviewed and approved by the director prior to construction. The plans shall conform to the requirements of the Public Works Design and Construction Standards. All public water system improvements shall be designed by a registered professional engineer.

Section 9. Section 13.20.030 is amended as follows:

13.20.030 Drainage master plan.

The city council shall adopt a drainage master plan (“the plan”), which shall be periodically updated on not less than a five-year cycle. Expansion of the system shall be in accordance with the most current Drainage Master Plan. In addition, fees, including systems development charges, shall be adopted to permit implementation of the plan. Systems development charges shall be adopted consistent with Chapter 13.05 NMC, Article I.

Section 10. Section 13.20.040. A is amended as follows:

A. The city, through its public works department, shall have all necessary authority and responsibility for the planning, design, construction, maintenance, administration and operation of the stormwater system.

Section 11. Section 13.20.100 is amended as follows:

The city engineer shall maintain appropriate Public Works Design and Construction Standards for the system that may be periodically approved by the city council. All design shall be in accordance with the most current version of the standards.

Section 12. Codification. Provisions of this ordinance shall be incorporated into the city code and the word ordinance maybe changed to another word, and the sections of this ordinance maybe renumbered, or re-lettered, provided however that any whereas clauses need not be codified and the city recorder is authorized to correct any cross-references and typographical errors.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: September 21, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 21st day of September, 2015, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Sue Ryan, City Recorder

ATTEST by the Mayor this 23rd day of September, 2015.

Bob Andrews, Mayor

Newberg Municipal Code
Title 13 PUBLIC UTILITIES AND SERVICES

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Title 13

PUBLIC UTILITIES AND SERVICES

Chapters:

- 13.05 General Provisions**
- 13.10 Wastewater**
- 13.15 Water**
- 13.20 Stormwater System**
- 13.25 Stormwater Management**

The Newberg Municipal Code is current through Ordinance 2779, passed February 17, 2015.

Chapter 13.05
GENERAL PROVISIONS

Sections:

Article I. System Development Charges

- 13.05.010 Purpose.
- 13.05.020 Scope.
- 13.05.030 Definitions.
- 13.05.040 System development charge established.
- 13.05.050 Methodology.
- 13.05.060 Authorized expenditures.
- 13.05.070 Expenditure restrictions.
- 13.05.080 Improvement plan.
- 13.05.090 Collection of charge.
- 13.05.100 Delinquent charges – Hearing.
- 13.05.110 Installment payment.
- 13.05.120 Exemptions.
- 13.05.130 Credits.
- 13.05.140 Segregation and use of revenue.
- 13.05.150 Appeal procedure.
- 13.05.160 Prohibited connection.

Article II. Penalty

- 13.05.170 Penalty.

Article I. System Development Charges

13.05.010 Purpose.

The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater drainage, streets, flood control, and parks upon those developments that create the need for or increase the demands on capital improvements. [Ord. 2306, 6-18-91. Code 2001 § 50.01.]

13.05.020 Scope.

The system development charge imposed by this article is separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development. [Ord. 2306, 6-18-91. Code 2001 § 50.02.]

Cross-reference: See Chapter 223 of Title 21 ORS for local system development charges.

13.05.030 Definitions.

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

“**Capital improvements**” means facilities or assets used for:

1. Water supply, treatment and distribution;
2. Wastewater collection, transmission, treatment and disposal;
3. Drainage and flood control;
4. Transportation; or
5. Parks and recreation.

“**Developer**” means the person, builder, applicant, permittee, or firm developing land, making the improvement, or building or modifying a structure.

“**Development**” means constructing a building or making a physical change in the use or appearance of a structure or land.

“**Improvement fee**” means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to NMC 13.05.040.

“**Land area**” means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

“**Parcel of land**” means a lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

“**Qualified public improvement**” means a capital improvement that is:

1. Required as a condition of residential development approval;
2. Identified in the plan adopted pursuant to NMC 13.05.080; and
3. Not located on or contiguous to a parcel of land that is the subject of a residential development approval.

“**Reimbursement fee**” means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to NMC 13.05.040.

“**System development charge**” means a reimbursement fee, an improvement fee or a combination of a reimbursement fee and an improvement fee assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. “**System development charge**” does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision. [Ord. 2306, 6-18-91. Code 2001 § 50.03.]

13.05.040 System development charge established.

A. System development charges shall be established and may be revised by resolution of the city council.

B. Unless otherwise exempted by the provisions of this article or other local or state law, a system development charge is imposed upon all development within the city, and upon all development outside the boundary of the city that connect to or otherwise use the wastewater facilities, stormwater facilities, or water facilities of the city. [Ord. 2306, 6-18-91. Code 2001 § 50.04.]

Cross-reference: See ORS 223.299 and 223.297 – 223.314 for system development charges.

13.05.050 Methodology.

A. The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the city council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.

B. The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related.

C. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be contained in a resolution adopted by the city council. [Ord. 2306, 6-18-91. Code 2001 § 50.05.]

13.05.060 Authorized expenditures.

A. Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

B. Improvement Fees.

1. Improvement fees shall be spent only on capacity-increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by development.

2. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to NMC 13.05.080.

C. Notwithstanding subsections (A) and (B) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this article, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures. [Ord. 2306, 6-18-91. Code 2001 § 50.06.]

13.05.070 Expenditure restrictions.

A. System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

B. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements. [Ord. 2306, 6-18-91. Code 2001 § 50.07.]

13.05.080 Improvement plan.

The city council shall adopt a plan that:

- A. Lists the capital improvements that may be funded with improvement fee revenues;
- B. Lists the estimated cost and time of construction of each improvement; and
- C. Describes the process for modifying the plan. [Ord. 2306, 6-18-91. Code 2001 § 50.08.]

13.05.090 Collection of charge.

A. The system development charge is due and payable upon issuance of:

- 1. A building permit (a development permit);
- 2. A permit to connect to the water system; or
- 3. A permit to connect to the wastewater system.

B. If no building or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.

C. If development is commenced or connection is made to the water or wastewater systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.

D. The city manager shall collect the applicable system development charge when a permit that allows building or development of a parcel is issued or when a connection to the water or wastewater system of the city is made.

E. The city manager shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for installment payments has been made pursuant to NMC 13.05.110, or unless an exemption is granted pursuant to NMC 13.05.120. [Ord. 2306, 6-18-91. Code 2001 § 50.09.]

13.05.100 Delinquent charges – Hearing.

A. When, for any reason, the system development charge has not been paid, the city manager shall report to the city council the amount of the uncollected charge, the description of the development to which the charge is attributable, the date upon which the charge was due, and the name of the developer.

B. The city council shall schedule a public hearing on the matter and direct that notice of the hearing be given to each developer with a copy of the city manager report concerning the unpaid charge. Notice of the hearing shall be given either personally or by certified mail, return receipt requested, or by both personal and mailed notice, and by posting notice on the parcel at least 10 days before the date set for the hearing.

C. At the hearing, the city council may accept, reject, or modify the determination of the city manager as set forth in the report. If the city council finds that a system development charge is unpaid and uncollected, it shall direct the city manager to enter the unpaid and uncollected system development charge in the lien docket. Upon completion of the docketing, the city shall have a lien against the described land for the full amount of the unpaid charge, together with interest at the legal rate of 10 percent and with the city's actual cost of serving notice of the hearing on the owners. The lien shall be enforceable in the manner provided in ORS Chapter 223. [Ord. 2306, 6-18-91. Code 2001 § 50.10.]

13.05.110 Installment payment.

A. When a system development charge of \$25.00 or more is due and collectible, the developer of the parcel of land subject to the development charge may apply for payment in installments, to include interest on the unpaid balance, in accordance with ORS 223.208.

B. An applicant for installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the development and that the interest of the applicant is adequate to secure payment of the lien.

C. The city manager shall docket the lien in the lien docket. From that time the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the city council. The lien shall be enforceable in the manner provided in ORS Chapter 223. [Ord. 2306, 6-18-91. Code 2001 § 50.11.]

13.05.120 Exemptions.

A. Structures and uses established and existing on or before the effective date of the ordinance codified in this article are exempt from a system development charge, except water and wastewater charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this section shall pay the water or wastewater charges pursuant to the terms of this article upon the receipt of a permit to connect to the water or wastewater system.

B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the current Oregon Residential Specialty Code, are exempt from all portions of the system development charge.

C. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge. [Ord. 2306, 6-18-91. Code 2001 § 50.12.]

13.05.130 Credits.

A. Credits shall be given for the computed system development charge to the extent that prior structures existed and services were established on or after the effective date of the ordinance codified in this article. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.

B. A credit shall be given for the cost of a qualified public improvement associated with a development or for the cost of an oversized improvement established by a resolution of the city council. If a qualified public improvement is the subject of the development approval, the credit shall be given only for the cost of the eligible portion of the improvement. The credit provided for by this subsection shall be only for the improvement fee charged for the type

of improvement being constructed and shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee.

C. Credit shall not be transferable from one development to another.

D. Credit shall not be transferable from one type of capital improvement to another. [Ord. 2306, 6-18-91. Code 2001 § 50.13.]

13.05.140 Segregation and use of revenue.

A. All funds derived from a particular system development charge are to be segregated by accounting practices from all other funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in NMC 13.05.060.

B. The city manager shall provide the city council with an annual accounting, based on the city's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account. [Ord. 2306, 6-18-91. Code 2001 § 50.14.]

13.05.150 Appeal procedure.

A. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the city council by filing a written request with the city manager describing with particularity the decision of the city manager and the expenditure which the person appeals. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.

B. After providing notice to the appellant, the city council shall determine whether the city manager decision or the expenditure is in accordance with this article and the provisions of ORS 223.297 through 223.314 and may affirm, modify, or overrule the decisions. If the city council determines that there has been an improper expenditure of system development charge revenues, the city council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent.

C. A legal action challenging the methodology adopted by the city council pursuant to NMC 13.05.050 shall not be filed later than 60 days after the adoption. [Ord. 2306, 6-18-91. Code 2001 § 50.15.]

13.05.160 Prohibited connection.

No person shall connect to the water or wastewater systems of the city unless the appropriate system development charge has been paid or installment payment method has been applied for and approved. [Ord. 2306, 6-18-91. Code 2001 § 50.16.]

Penalty: See NMC 13.05.170.

Article II. Penalty

13.05.170 Penalty.

Violation of NMC 13.05.160 is punishable by a fine not to exceed \$500.00. [Ord. 2585, 7-21-03; Ord. 2306, 6-18-91. Code 2001 § 50.99.]

Chapter 13.10
WASTEWATER

Sections:

Article I. General Provisions

- 13.10.010 Declaration of intent to acquire.
- 13.10.020 Purpose and policy.
- 13.10.030 Administration.
- 13.10.040 Definitions.

Article II. Wastewater Connections

- 13.10.050 Use of public wastewater system required.
- 13.10.060 Private wastewater disposal.
- 13.10.070 Wastewater system connection procedures.

Article III. Discharge Regulations

- 13.10.080 General discharge prohibitions.
- 13.10.090 Specific discharge limitations.
- 13.10.100 Federal categorical pretreatment standards.
- 13.10.110 Pretreatment requirements.
- 13.10.120 Spill prevention/slug control.

Article IV. Industrial Waste Discharge Permits

- 13.10.130 Requirements for a permit.
- 13.10.140 Wastewater discharge permitting – New source and new user.
- 13.10.150 Permit application.
- 13.10.160 Permit issuance and conditions.
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- 13.10.210 City inspection and sampling.
- 13.10.220 Confidential information.

Article V. Rates, Fees and Charges

- 13.10.230 Authorization of just and equitable rates, fees and charges.
- 13.10.240 Customer classes – Billing structure defined.
- 13.10.250 Other fees and charges.
- 13.10.260 Customers outside city.
- 13.10.270 Handling of funds.

Article VI. Enforcement

- 13.10.280 Harmful discharges.
- 13.10.290 Violations, notifications and show-cause hearings.
- 13.10.300 Revocation of permit and/or termination/suspension of service.
- 13.10.310 Public notification.
- 13.10.320 Appeals.
- 13.10.330 Falsifying information.
- 13.10.340 Supplemental enforcement action.

The Newberg Municipal Code is current through Ordinance 2779, passed February 17, 2015.

- 13.10.350 Cost recovery.
13.10.360 Penalty.

Cross-references: Citizens' rate review committee, see NMC 2.15.120 et seq.; stormwater system, see Chapter 13.20 NMC; system development charges, see Chapter 13.05 NMC, Article I.

Article I. General Provisions

13.10.010 Declaration of intent to acquire.

Pursuant to the general laws of the State of Oregon and the Charter of the City of Newberg, the city council of the city does declare its intention to own, acquire, construct, equip, operate and maintain, either within or without the corporate limits in whole or in part, wastewater systems, including maintenance, enlargement or extension of the present wastewater system of the city, wastewater treatment or disposal plant or plants, outfalls, force mains, pumping stations or ejector stations, with all appurtenances necessary, useful or convenient for the collection, transportation, treatment and disposal of wastewater. [Amended during 2011 recodification; Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.01.]

Cross-reference: See ORS 454.285.

13.10.020 Purpose and policy.

This chapter sets forth uniform requirements for users of the publicly owned treatment works (POTW) for the City of Newberg and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403). The objectives of this chapter are:

- A. To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;
- B. To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- C. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
- D. To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public;
- E. To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW;
- F. To provide for equitable distribution of the cost of the municipal wastewater system in compliance with the Environmental Protection Agency's requirements; ~~and~~
- G. To assure the financial self-sufficiency of the POTW;
- H. To improve the existing POTW to provide adequate service during peak demand periods;
- I. To reduce inflow and infiltration into the POTW;
- I. To improve the existing POTW to control and eliminate wastewater overflows to the extent practicable and
- J. The most current Sewerage Master Plan and Wastewater Treatment Plant Facilities Plan are incorporated by reference as supporting technical documents.

This chapter shall apply to all users of the POTW. This chapter authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.02.]

13.10.030 Administration.

A. Except as otherwise provided herein, the director shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the director may be delegated by the director to other city personnel.

B. In achieving the objectives of this chapter, it shall be the policy of the city to actively promote the health of the industrial community through accommodation, assistance and cooperation, consistent with the city's responsibility to protect the waters of the state from pollution and to secure the health, safety and welfare of the residents of the community. To that end, this chapter shall be implemented using good business practices, abidance of the CWA and general pretreatment regulations, and best professional judgment; with associated decisions taking all known facts into consideration.

C. This chapter provides for the regulation of direct and indirect contributors to the POTW through the issuance of permits to certain nondomestic users (primarily significant industrial users (SIUs)), and through enforcement activities; assures that existing customers' capacity will not be preempted; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the programs established herein. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.03.]

D. The construction and expansion of the POTW shall be in accordance with the most current Master Plan and Public Works Design and Construction Standards.

13.10.040 Definitions.

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

Abbreviations. For the purpose of this chapter, the following abbreviations mean:

1. **"BMP"** means best management practice.
2. **"BOD5"** means biochemical oxygen demand (five day).
3. **"CFR"** means the Code of Federal Regulations.
4. **"COD"** means chemical oxygen demand.
5. **"CWA"** means the Clean Water Act.
6. **"DEQ"** means the Oregon Department of Environmental Quality.
7. **"EPA"** means the U.S. Environmental Protection Agency.
8. **"GPD"** means gallons per day.
9. **"l"** means liter.
10. **"LEL"** means lower explosive limit.
11. **"mg"** means milligram.
12. **"mg/L"** means milligrams per liter.
13. **"NPDES"** means National Pollutant Discharge Elimination System.
14. **"O&M"** means operations and maintenance.
15. **"OSPSC"** means the Oregon State Plumbing Specialty Code.
16. **"POTW"** means publicly owned treatment works.

17. “**RCRA**” means the Resource Conservation and Recovery Act.
18. “**SIC**” means standard industrial classification.
19. “**SWDA**” means the Solid Waste Disposal Act (42 USC 6901 et seq.).
20. “**TSS**” means total suspended solids.
21. “**USC**” means the United States Code.

“**Act**” or “**the Act**” means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251, et seq.

“**Approval authority**” means the State of Oregon Department of Environmental Quality (DEQ).

“**Administrator**” means the U.S. EPA Administrator.

“**Applicable pretreatment standards**” means, for any specified pollutant, the City of Newberg prohibitive standards, the City of Newberg specific pretreatment standards (local limits), the State of Oregon pretreatment standards, or the EPA’s categorical pretreatment standards (when effective), whichever is more stringent is appropriate or most stringent.

“**Authorized representative of industrial user**” means:

1. If the user is a corporation:
 - a. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - b. The manager of one or more manufacturing, production, or operation facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
2. If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.
3. If the user is a federal, state, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
4. The individuals described in subsections (1) through (3) of this definition may designate another authorized representative if the authorization is in writing by the individual described in subsections (1) through (3) of this definition, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

“**Available wastewater system**” means any wastewater system that can be used without the need to acquire easements and sufficient grade exists to serve the property.

“**Best management practice (BMP)**” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in this chapter. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

“**Biochemical oxygen demand (BOD5)**” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 degrees Celsius, usually expressed as a concentration (mg/L). This may be expressed in terms of either weight or concentration.

“**Building drain**” means that part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste, and other drainage pipes within or adjoining the building or structure, and conveys the same to the building wastewater system.

“**Building official**” means the building official for the City of Newberg, Oregon, or the building official’s duly authorized representative or agent.

“**Building stormwater system**” means that part of the piping of a stormwater drainage system which begins at the connection to the building storm drain at a point five feet outside the established line of the building or structure, and conveys stormwater, surface water, and other unpolluted water to the public stormwater system, street, or other point of disposal.

“**Building wastewater system**” means that part of the horizontal piping of a wastewater drainage system beginning five feet or more from any building or structure, and which receives the discharge of the building drain and conveys it to a public wastewater system, private wastewater system, individual wastewater disposal system or other point of disposal.

“**Categorical pretreatment standards**” or “**categorical standard**” means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Act (33 USC 1317) that apply to a specific category of users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405 through 471.

“**Categorical user**” means an industrial user subject to a categorical pretreatment standard or categorical standard.

“**Chemical oxygen demand (COD)**” means the measure of the organic matter content in wastewater and is the oxygen equivalent of the organic matter that can be oxidized under standard laboratory procedure using a strong chemical oxidizing agent in an acidic medium.

“**City**” or “**City of Newberg**” means the municipality of Newberg, Oregon, a municipal corporation of the State of Oregon, acting through the city council or any board, committee, body, official or person to whom the city council shall have lawfully delegated the power to act for or on behalf of the city. Unless a particular board, committee, body, official or person is specifically designated in these rules and regulations, wherever action by the city is explicitly required or implied herein, it shall be understood to mean action by the director of public works or designee of Newberg, Oregon, or the director of public works’ duly authorized representative or agent.

“**Collection system**” means facilities maintained by the City of Newberg for collecting, pumping, conveying and controlling wastewater.

“**Color**” means the optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred percent transmittance is equivalent to zero (0.0) optical density.

“**Combined wastewater system**” means a wastewater system that is designed as both a wastewater system and a stormwater system.

“**Commercial user**” means the occupant or lessee of any premises used for commercial or business purposes which is not an industrial user as defined in this chapter.

“**Compatible pollutant**” means the pollutants of biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria, plus additional pollutants, which the city treatment works may be specifically designed to treat.

“**Composite sample**” means a series of samples mixed together so as to approximate the average strength of discharge to the wastewater system. A composite sample for one day shall consist of a pool of 24 samples, each taken hourly, unless special conditions warrant otherwise and the director of public works or designee designates an alternative acceptable procedure.

“**Control authority**” means the City of Newberg, Oregon.

“**Control manhole**” means a manhole installed as required by the director of public works or designee under the provisions of this chapter; or if no manhole has been so installed, the term “**control manhole**” shall mean such point, as shall be determined by the director of public works or designee, to which nondomestic wastes produced on the premises and discharged into a wastewater system are accessible for testing.

“**Cooling water**” means water used for cooling, which does not come into direct contact with any raw material, intermediate product, waste product, or finished product. Cooling water may be generated from any use, such as air conditioning, heat exchangers, cooling or refrigeration, to which the only pollutant added is heat.

“**Direct discharge**” means the discharge of treated or untreated wastewater directly to the water of the State of Oregon.

“**Director**” or “**director of public works**” means the director of public works or designee of the City of Newberg, Oregon, or the director of public works’ duly authorized representative or agent.

“**Discharge flow**” means the deposit of pollutants into the city wastewater system.

“**Domestic user**” means any person who contributes, causes, or allows the contribution of wastewater into the City of Newberg’s POTW that is of a similar volume and/or chemical makeup to that of a residential dwelling unit. Discharges from a residential dwelling unit typically include up to 100 gallons per capita per day, 0.2 pounds of BOD per capita per day, and 0.17 pounds to TSS per capita per day.

“**Domestic wastewater**” means wastewater of the type commonly introduced into a treatment works by residential users.

“**Drainage water**” means stormwater, ground water, surface drainage, subsurface drainage, spring water, well overflow, roof drainage or other like drainage other than wastewater or industrial wastewater.

“**Dwelling unit**” means a facility designed for permanent or semi-permanent occupancy and provided with minimum kitchen, sleeping, and sanitary facilities for one family. A dwelling unit equals 18 fixture units.

“**Environment**” means any naturally occurring river, stream, creek, or other waterway, and land mass, the atmosphere, or any subsurface water, aquifer or ground water or any manmade edifice directly or indirectly connected to waterways, land masses, the atmosphere, or ground water as herein listed.

“**Environmental Protection Agency (EPA)**” means the U.S. Environmental Protection Agency or, where appropriate, the Director of the Region 10 Office of Water, or other duly authorized official of said agency.

“**Environmental services supervisor**” is delegated by the director as the duly authorized representative of the city responsible for managing the industrial pretreatment program. Should the environmental services supervisor be unavailable then the superintendent shall have responsibility.

“**Existing source**” means a categorical industrial user, the construction or operation of whose facility commenced prior to the publication by the EPA of proposed categorical pretreatment standards, which would be applicable to such source if and when the standard is thereafter promulgated in accordance with Section 307 of the Act.

“**Existing user**” means any noncategorical user which was discharging wastewater prior to the effective date of the ordinance codified in this chapter.

“**Flow**” means the daily total of wastewater flow from an industrial, commercial or domestic user.

“**Garbage**” means solid wastes from the preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

“**Grab sample**” means a wastewater sample, which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.

“**Hauled or liquid waste**” means any domestic wastewater from holding tanks such as vessels, campers, trailers, septic tanks and city vector truck waste.

“**Indirect discharge**” means the introduction of pollutants into a POTW from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.

“**Industrial discharge/user**” means a source of indirect discharge.

“**Industrial wastewater**” means any nondomestic liquid, gaseous substance or semi-solid from any producing, manufacturing business or trade, or processing operation of whatever nature (as distinct from wastewater), and the contents of chemical toilets, septic tanks, and waste-holding tanks.

“**Industrial wastewater discharge permit**” means a permit to discharge industrial wastewaters into the city wastewater system issued under the authority of this chapter and which prescribes certain discharge requirements and limitations.

“**Institution**” means any building or group of buildings used as a hospital, correction facility or university, publicly or privately owned.

“**Interference**” means a discharge which alone or in conjunction with a discharge or discharges from other sources, both:

1. Inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and
2. Is a cause of a violation of the city’s NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of wastewater use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II, commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

“**Lateral sewer**” means any side lateral off a wastewater main line which is in the public right-of-way or easement, operated and maintained by the city and to which a building wastewater system connects or may connect.

“**Local limit(s)**” means enforceable pretreatment standards developed based on local requirements developed by the city to address federal standards as well as state and local regulations, which apply only to significant industrial users (SIU).

“**Maximum allowable discharge limit**” means the maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

“**Medical wastes**” means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

“**Multifamily dwelling**” means a building or group of buildings or dwelling units or portion of a building or group of buildings or dwelling units designed for occupancy by two or more families, living independently of each other.

“**National Pollutant Discharge Elimination System (NPDES) permit**” means a permit issued pursuant to Section 402 of the Act (33 USC 1342).

“**National pretreatment standard**” means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5.

“**National prohibitive discharge standard**” or “**prohibitive discharge standard**” means prohibited discharges under the authority of 40 CFR 403.5.

“**Natural outlet**” means any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

“**New source**” means:

1. Any building, structure, facility, or installation from which there is or may be discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such sources if such standards are thereafter promulgated in accordance with that section; provided, that:
 - a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria above but otherwise alters, replaces, or adds to existing process or production equipment.
3. Construction of a new source as defined herein has commenced if the owner or operator has:
 - a. Begun, or caused to begin as part of a continuous on-site construction program:
 - i. Any placement, assembly, or installation of facilities or equipment; or
 - ii. Significant site-preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for placement, assembly, or installation of new source facilities or equipment; or
 - b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation.

“**New user**” means a user that is not regulated under federal categorical pretreatment standards but that applies to the City of Newberg for a new building permit or occupies an existing building and plans to commence discharge of wastewater to the city’s collection system after the effective date of the ordinance codified in this chapter. Any person that buys an existing facility that is discharging nondomestic wastewater will be considered an “**existing user**” if no significant changes are made in the manufacturing operation.

“**Nondischarging categorical industrial user (NDCIU)**” means nondischarging industries that have industrial processes that would otherwise be subject to national pretreatment standards, including NDCIUs with zero discharge categorical standards.

“**Operation and maintenance**” means activities required to assure the dependable and economical function of treatment works.

1. “**Operation**” means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, safety and emergency operation planning.

2. “**Maintenance**” means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

“**OSPSC**” means the current edition of the Oregon State Plumbing Specialty Code, as adopted by the Oregon Department of Commerce.

“**Parameter**” means a characteristic of wastewater that may be measured or calculated and is used in this chapter as a discharge limitation.

“**Pass through**” means the occurrence of an indirect discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

“**Permittee**” means a person or user issued a wastewater discharge permit.

“**Person(s)**” means an individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity or their legal representatives, agents or assigns. This definition includes all federal, state, or local governmental entities.

“**pH**” means the logarithm (base 10) of the reciprocal of the hydrogen ion activity expressed in moles per liter of solution.

“**Pollutant**” means any spoil, waste, residue, wastewater, garbage, sludge, munitions, chemicals, biological materials, radioactive materials, heat, rock, sand, dirt, soil, or agricultural, municipal, or industrial material discharged into water.

“**Pollution**” means the degradation of the chemical, physical, biological or radiological quality of ground, surface, subsurface, or storm drainage waters by man, or the activities of man.

“**Potential to discharge**” means hard plumbing connected to the POTW’s wastewater system. This includes plumbing with shutoff valves and plumbing that has been plugged with temporary or removable plugs. Plumbing that has been permanently disconnected or cemented shut would not constitute a potential to discharge.

“**Pretreatment**” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the city wastewater system.

“**Pretreatment requirement**” means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard applicable to industrial users.

“**Pretreatment standards**” means prohibited discharge standards, categorical pretreatment standards, and local limits established by the city.

“**Private collection system**” means a privately owned and maintained lateral wastewater system normally six or eight inches in diameter, installed to serve multi-unit structures on single-ownership properties which cannot legally be further divided, such as apartments, mobile home parks, and schools. A single-family residence with an unattached garage or shop with sanitary facilities is exempt from this definition.

“**Prohibited discharge standards**” or “**prohibited discharges**” means absolute prohibitions against the discharge of certain substances, which appear in other sections of this chapter.

“**Properly shredded garbage**” means the wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public wastewater systems, with no particle greater than one-half inch in any dimension.

“**Public wastewater system**” means any wastewater system in public right-of-way or easement operated and maintained by the city.

“**Public works director**” is hereafter identified as the “**director**” or “**director of public works**.”

“**Publicly owned treatment works (POTW)**” means a treatment works, as defined by Section 212 of the Act (33 USC 1292), which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of wastewater or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

“**Replacement**” means obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life, whichever is longer, of the treatment works to maintain the capacity and performance for which such works were designed and constructed.

“**Residential wastewater discharge**” means that portion of the residential users’ measured or estimated average monthly water consumption, which, after seasonal adjustment, represents the users’ wastewater discharge, in cubic footage volume of hydraulic flow.

“**Residential user**” means the occupant or lessee of a dwelling unit as defined in this chapter. The dwelling unit may be a single-family dwelling, or a portion of a multifamily dwelling.

“**Settleable solids**” means those solids that are capable of being settled in a standard Imhoff cone as outlined in Standard Methods.

“**Side sewer**” means the city wastewater system between the property line and main or trunk sewer of the city wastewater system, also called a lateral sewer.

“**Significant industrial user**” means (except as provided in subsections (3) and (4) of this definition):

1. A user subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; or
2. A user that:
 - a. Discharges an average of 25,000 gallons per day (gpd) or more of process wastewater to the POTW (excluding sanitary noncontact cooling and boiler blowdown wastewater);
 - b. Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant;
 - c. Is designated as such by the city on the basis that it has a reasonable potential for adversely affecting the POTW’s operation or for violating any pretreatment standard or requirement.
3. The city may determine that an industrial user subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N is a nonsignificant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary noncontact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:
 - a. The industrial user, prior to the city’s finding, has consistently complied with all applicable categorical pretreatment standards and requirements;

b. The industrial user annually submits the certification statement required in 40 CFR 403.12(q), signed and certified in accordance with NMC 13.10.200(D)(6), together with any additional information necessary to support the certification statement; and

c. The industrial user never discharges any untreated concentrated wastewater.

4. The city, upon a finding that a user meeting the criteria in subsection (2) of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, may, at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

"Single-family dwelling" means any residential building designed for occupancy by only one family.

"Slug load" or **"slug discharge"** means any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in NMC 13.10.080. A slug discharge is any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or a noncustomary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, local limits or permit conditions.

"Standard industrial classification (SIC)" means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, as amended from time to time.

"Standard Methods" means the examination and analytical procedures set forth in the most recent edition of Standard Methods for the Examination of Water and Wastewater, published jointly by the American Public Works Health Association, the American Water Works Association and the Water Pollution Control Federation.

"Storm drain" means that portion of the storm drainage system that is within the public right-of-way or easement operated and maintained by the city. This may include, but is not limited to, pipes, culverts, ditches, waterways or any other appurtenances used for the removal or transportation of rainwater or other unpolluted water.

"Stormwater" means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

"Stormwater system" means a wastewater system which carries storm and surface waters and drainage, but excludes wastewater and industrial wastewater.

"Superintendent" means the person designated by the city to supervise the operation of the wastewater treatment plant, or a duly authorized representative of that person.

"Suspended solids" or **"total suspended solids"** means the total suspended matter that either floats on the surface or is in suspension in water or wastewater, and that is removable by laboratory filtering (as described in Standard Methods for the Examination of Water and Wastewaters, current edition, or Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136, as published in the Federal Register and referred to as nonfilterable residue).

"Toxic pollutant" means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the EPA.

"Treatment plant effluent" means the discharge from the POTW into waters of the State of Oregon.

"Trunk sewer" means a sewer 10 inches or larger to which other lateral sewers connect. May in some cases serve as a lateral sewer.

"Unpolluted water" means water to which no wastewater or industrial wastewater has been added, or water which has been used in such a manner that no pollutants have been introduced to the flow.

“**Upset**” means an exceptional incident in which a user unintentionally and temporarily is in a state of noncompliance with the discharge requirements set forth in this chapter due to factors beyond the reasonable control of the user; and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

“**User**” or “**users**” means any person who contributes or causes or allows the contribution of wastewater or industrial wastewater into the municipal wastewater system, including persons who contribute such wastes from mobile sources.

“**User charge**” means a charge levied on users of a treatment works for the user’s proportionate share of the cost of operation and maintenance (including replacement) of such works.

“**Wastewater**” means a combination of liquid or water-carried waste or pollutants from residences, commercial and business buildings, institutions and industrial establishments, together with such ground, surface and stormwater that may be present, whether treated or untreated.

“**Wastewater discharge permit**” (“**industrial wastewater discharge permit**,” “**discharge permit**”) means an authorization or equivalent control document issued by the city to users discharging wastewater to the POTW. The permit may contain appropriate pretreatment standards and requirements as set forth in this chapter.

“**Wastewater system**” means a pipe or conduit for carrying or intended to carry wastewater. This includes all pipes, conduits, pumps, wet wells, treatment equipment and other components involved in the collection, transportation, treatment, and disposal of residential or industrial wastewater.

“**Wastewater system user**” means any person using a city wastewater system, or who has a residence, multifamily, or commercial building, institutional building, industrial building, or other structure containing plumbing, requiring connection to a wastewater system as outlined by this chapter.

“**Wastewater treatment plant**” or “**treatment plant**” means that portion of the POTW which is designed to provide treatment of municipal wastewater and industrial waste.

“**Water user**” means any person using water through the facilities of the municipal water systems.

“**Watercourse**” means a channel in which a flow of water occurs, either continuously or intermittently. [Amended during 2011 recodification; Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.04.]

Article II. Wastewater System Connections

13.10.050 Use of public wastewater system required.

A. Unlawful Uses. It shall be unlawful for any person to place, deposit or permit to be deposited in an unsanitary manner upon public or private property within the city, or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste.

B. Pretreatment Required. It shall be unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, any wastewater, industrial wastewaters or other polluted waters except where suitable treatment has been provided in accordance with subsequent provisions of this chapter and as approved and specifically permitted as necessary by the Oregon Department of Environmental Quality.

C. Unlawful Disposal Systems. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater.

D. Connection Required. The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any public street, alley or easement in which there is now located or may in the future be located a public wastewater system of the city, is required at the owner’s expense to install suitable toilet and plumbing facilities directly with the proper side sewer in accordance with the provisions of this chapter. The connection shall be made within 90 days after the date of the official notice to do so;

provided, that the public wastewater system is within 100 feet of any property line. For the purposes of this section, notice shall be deemed to have been received upon the mailing of the notice in accordance with NMC 13.10.290.

E. Failure to Connect. Upon the failure of the owner, lessee or occupant to connect the premises to a public wastewater system within the stipulated time, the director, after giving the owner, lessee or occupant an opportunity to be heard, may proceed to connect the premises to a public wastewater system, and the cost of the connection shall be charged and become a city lien upon the property. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.15.]

Penalty: See NMC 13.10.360.

13.10.060 Private wastewater disposal.

A. Compliance. Where a public wastewater system is not available under the provisions of this chapter, the building wastewater system shall be connected to a private wastewater disposal system whose type, capacities, location and layout are in compliance with the provisions of this article and with requirements of the OSPSC, Yamhill County sanitarian, and the rules and regulations of the Oregon Department of Environmental Quality.

B. Permit Required. Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by a representative of the Oregon Department of Environmental Quality. That permit must also be signed by the director for any proposed installation within the city's adopted urban growth boundary.

C. Connection to Wastewater System. At such time as a public wastewater system becomes available to a property serviced by a private wastewater disposal system, as provided in NMC 13.10.050(D), a direct connection shall be made to the public wastewater system in compliance with this chapter, including payment of all connection fees and systems development charges. Any septic tanks, cesspools and similar private wastewater disposal facilities shall be removed or abandoned and filled with suitable material as required by the Oregon Department of Environmental Quality. When public wastewater system service is obtained, the connection or connections to the premises being served shall be made ahead of the private disposal system. No connections shall be made to the effluent side of existing septic tanks or cesspools.

D. Owner Responsibility. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, including routine pumping, at no expense to the city. Evidence of untreated wastewater on the ground surface shall be proof of an improperly functioning private wastewater disposal facility.

E. Intent in Law. The provisions of this article shall be in addition to and not in derogation of the requirements of general law. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.16.]

Penalty: See NMC 13.10.360.

13.10.070 Wastewater system connection procedures.

A. Permit Required. All new construction shall be connected to the city wastewater system. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public wastewater system or appurtenance without first obtaining a written permit from the director. The permit shall specify the location where the connection (or other approved work) shall be made, the manner of making the connection, the nature of the waste to be discharged to the wastewater system, the name and address of the owner, and the name of the wastewater system installer who will be doing the work. No permit shall be issued unless the wastewater system to which connection is requested has been accepted as a part of the public or commonly maintained private wastewater system. No permit shall be issued without payment of all appropriate permit, connection, development and inspection fees, including any delinquent assessments against the owner of the property.

B. Permit Types.

1. There shall be two types of building wastewater system permits:
 - a. Type 1, for residential and commercial service; and
 - b. Type 2, for service to establishments producing industrial wastes.

2. There shall be the following classes of industrial users under the Type 2 wastewater system permit:

- a. Class 1: Canneries, including food and animal processing.
- b. Class 2: Industrial users of water in the processing or monitoring of products.
- c. Class 3: All other industrial users.
- d. Additional classes of industrial users may be established by the city as needed.

3. In any case, the owner or an agent of the owner shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the ~~environmental services superintendent~~ **Director**. Connection fees and systems development charges for residential, commercial and industrial building wastewater system permits payable to the director shall be in such amounts as provided for in subsection (F) of this section.

C. Industrial Wastewater Discharge Permit Required. Industrial and institutional users shall not use the public wastewater system for the discharge of industrial or any other wastes either directly or indirectly without first obtaining an industrial wastewater discharge permit as provided in NMC 13.10.130 et seq.

D. Emptying of Wastewater Holding Tanks. Every establishment providing facilities for the emptying of wastewater holding tanks on recreational vehicles shall obtain a permit to do so. The facilities shall be maintained in a clean and sanitary condition and shall be so constructed that surface drainage cannot enter the wastewater system. Plans for such dumping facilities constructed after the effective date of the ordinance codified in this chapter shall be approved by the director prior to construction. The permit fees shall be the same as those required for a wastewater system connection and shall be in addition to the appropriate connection fees and systems development charges.

E. Payment of Connection Costs. All costs and expenses incidental to the installation and connection of the building wastewater system shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building wastewater system.

F. Wastewater System Connection and Systems Development Charges.

1. The wastewater system connection fee shall be calculated based on estimates of actual costs incurred by the city in conjunction with the connection of the service, which includes tapping the main line and installing the side sewer to the property line, and shall be payable with the application for service. Costs in excess of the estimate shall be due upon completion of the connection work by the city and any excess shall be promptly refunded.

2. a. The systems development charge shall be charged on a per dwelling unit or dwelling unit equivalency basis at a rate set forth by resolution of the city council. Any premises, except single-family dwellings, which shall add additional dwelling unit equivalents to a structure served by an existing service shall be subject to an additional wastewater system development charge for the dwelling unit equivalents added.

b. A dwelling unit equivalency shall be defined by city council resolution.

c. All estimated wastewater system connection costs and systems development charges shall be paid at the time the building permit is issued. No building permits shall be issued or connections made unless full payment is received, except as provided in subsection (F)(5) of this section.

d. For properties located outside the city limits, a factor of two shall be multiplied times the systems development charge computed for the property or project if it were located within the city limits.

3. As used herein, the term “**wastewater system openings**” shall be defined to mean and include all lavatories, wash basins, toilets, bathtubs, showers, sinks, laundry trays, floor drains and any and all other fixtures or connections which shall provide an opening for wastewater and waste to be drained into the wastewater system, but shall not include cleanout openings which are used solely for maintaining, repairing and/or cleaning the plumbing system on any premises.

4. Each separate building or structure is required to possess a wastewater system connection permit, irrespective of the fact that the same may be under one ownership or constructed upon one property; and the fact that the same may be connected by doorways, archways, walks or appurtenances thereto shall not alter or change this provision.

5. Where existing premises are presently being served by septic tank, the owner may apply for permission to pay the wastewater system connection fee and systems development charge in equal monthly installments, not exceeding 24 months. When aforesaid owner elects to pay the wastewater system connection fee and systems development charge in monthly installments, the unpaid balance of the connection fee shall bear interest at a rate approved by the city manager or the city manager's designee, and the unpaid balance of the wastewater system connection fee and systems development charge, together with the interest charges on the unpaid balance, shall constitute a lien upon the property until paid in full.

6. Revenue from wastewater system connection fees as defined in subsection (F)(1) of this section shall be paid into the wastewater fund ~~to defray the cost of the side sewer constructed~~. Revenue from systems development charges shall be identified by special accounting such that the funds can be used to defray the cost of future wastewater facilities improvements.

G. Design/Construction Standards. Plans for all public and private wastewater systems shall be reviewed and approved by the ~~D~~director prior to construction. The plans shall conform to the requirements of the State Department of Environmental Quality, as well as ~~the City's Public Works Design and Construction Standards-city standards~~. All public and commonly maintained private wastewater systems shall be designed by a registered professional engineer. ~~Although specific standards may apply in individual cases, general city standards are summarized below:~~

~~1. Old building wastewater systems may be used in connection with new buildings only when they are found, on examination and test by the director, to meet all requirements of this chapter.~~

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~~2. The building wastewater system shall be cast iron pipe, ABS, PVC, or approved equal in accordance with the OSPSC. All joints and connections shall be made watertight and installed in accordance with the OSPSC. Any part of the building wastewater system that is located within 10 feet of a water service pipe shall be constructed of cast iron pipe. Cast iron pipe may be required by the director where the building wastewater system is exposed to damage by tree roots. If installed in filled or unstable ground, the building wastewater system shall be of cast iron pipe; except that nonmetallic material may be accepted if laid on a suitable concrete bed or cradle as approved by the director.~~

~~3. The size and slope of the building wastewater system shall be subject to the approval of the director, but in no event shall the diameter be less than four inches. The slope of such four inch pipe shall be not less than one fourth inch per foot toward the point of disposal, except with the approval of the director.~~

~~4. Whenever possible, the building wastewater system shall be brought to the building at an elevation below the basement floor. The depth shall be sufficient to afford protection from frost but in no case shall be less than one foot below the ground surface. The building wastewater system shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipes and fittings.~~

~~5. In all buildings in which any wastewater system is too low to permit gravity flow to the public wastewater system, wastewater carried by such wastewater system shall be lifted by approved artificial means and discharged to the building wastewater system.~~

~~6. All excavations required for the installation of a building wastewater system shall be open trench work unless otherwise approved by the director. Pipe laying shall be performed in accordance with the pipe manufacturer's recommendations. In no case shall broken or damaged pipe be used.~~

~~7. Tapping of building wastewater systems directly into manholes is prohibited, except:~~

~~a. Where provided for in original design and approved by the director.~~

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~~b. When allowed by written permission of the director because no other course is practical.~~

~~c. Tapping shall be done only by outside drop to discharge at the base of the manhole.~~

H. Cleanouts. Cleanouts shall be installed on all new building wastewater systems. The cleanout shall be placed vertically above the flow of the pipe and at a point near the connection of the building wastewater system to the building drain. Cleanouts will also be placed at the connection of building wastewater system to the public system to public standards.

I. Unacceptable Conditions. No direct connection shall be made between the wastewater system and any opening, which will drain rain runoff, surface water, or subsurface water.

J. Construction Safety Measures. All excavations for building wastewater system installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the director.

K. Independent Drainage Systems. The drainage system of each new dwelling unit and/or building using an existing wastewater system shall be separate and independent from that of any other dwelling and/or building. Every dwelling and/or building under separate ownership shall have an independent wastewater system connection with a public or private collection system.

L. Parcelization of Private Collection Systems. When property being served by a private collection system is divided into two or more parcels with different ownership:

1. The private wastewater collection system may be transferred to the public system with the consent of the director, provided the private collection system meets the current city standards; or
2. The private collection system shall be constructed to meet the current city standards; or
3. Individual wastewater service connections to the public main will be provided by the private collection system owner.

M. Inspection Notification for Side Sewer Permit. Reasonable notices shall be given to the director to inspect all work in connection with the construction or reconstruction of any public wastewater system or connection of any public wastewater system to a city wastewater system main while the work is still uncovered. The applicant for the side sewer permit shall notify the director when the side sewer is ready for inspection at least three working days prior to the date of the desired inspection. All work shall be done according to the specifications prescribed by, and subject to the approval of, the director.

N. Inspection Notification for Building Wastewater System Permit. The applicant for the building wastewater system permit shall notify the building official when the building wastewater system is ready for inspection and connection to the side sewer. The building inspector shall be notified at least three working days prior to the date of the desired inspection. Reasonable notice shall also be given to the building official to inspect all work in connection with the construction or reconstruction of any public wastewater system.

O. Owner Responsibility. It shall be the responsibility of the owner, lessee or occupant of a building to maintain the building wastewater system or private collection system in a free-flowing and watertight condition, from the structure served to the public wastewater system or the property line.

P. Monitoring of Private Wastewater Systems.

1. New and existing private wastewater systems will be periodically monitored by the city for leaks or discharges of extraneous water. This monitoring may take the form of, but is not limited to: direct visual observations; indirect measurements; television inspection; or air or water pressure tests, smoke tests or exfiltration tests.

2. If, in the opinion of the director, such monitoring shows a wastewater system to be defective, no further proof is needed for the director to require the wastewater system to be repaired to current standards at the owner's expense.

3. Existing wastewater systems exceeding a maximum allowable infiltration inflow rate of more than 300 gallons per day per single detached living unit, 1,200 gallons per acre per day or 3,000 gallons per day per inch-diameter mile of wastewater system are deemed unsafe and unsanitary and shall be repaired at the owner's expense.

4. Those users who do not comply with the infiltration/inflow regulations shall have a period of time as determined by the director, but not to exceed 90 days unless approved otherwise by the director, to reach compliance with the regulations.

Q. Discontinuance of Septic Tank or Cesspool. In every instance in which use of a septic tank or cesspool is discontinued for any reason, the septic tank or cesspool shall be pumped out and emptied of wastewater and sludge, the top demolished, and refilled with clean sand or gravel.

R. Capping of Building Wastewater System for Abandonment.

1. Before a building can be moved or demolished, a building permit must be obtained from the city building official which requires that the wastewater system has been properly capped and inspected. No exceptions will be allowed.

2. All building wastewater systems shall be capped at the public main in an approved manner by the property owner or the property owner's contractor and inspected by the city prior to closure of the excavation. Exception: If adequate proof can be given showing a wastewater system service is in usable condition and is to be reused, and director may allow the service to be capped at the property line.

3. It is the owner's responsibility to ensure that no other structure is connected to the wastewater system service being abandoned. If the line being abandoned is serving more than one structure, a service connection for the structure(s) still using the service must be provided, and the applicant shall relocate the wastewater system at the applicant's expense.

4. If the director determines that capping at the main will cause undue hazard to the public or if a street has been recently resurfaced, a variance to this section may be granted to require that the wastewater system be capped as close to the main as is practical.

S. Watertightness, Other Conformance Required. All public or private wastewater systems, whether publicly or privately constructed, shall conform to current standards of design, materials, and workmanship prescribed by the director. Failure to meet tests for watertightness shall be grounds for refusal of acceptance. Permits to connect to such wastewater systems will not be issued until the system is approved and accepted. All new construction of private wastewater systems, including single-family dwellings, shall conform to the OSPSC.

T. Installations on Private Property. All wastewater and plumbing installations on private property to be connected with any wastewater system connection installed in accordance with this chapter shall be installed in accordance with the provisions of the OSPSC and all ordinances, rules, and regulations of the city applicable thereto; and the director shall have the power to refuse to make or complete the wastewater system connection in the event of any failure to comply with the provisions of this subsection. [Amended during 2011 recodification; Ord. 2733 Att. A, 2-7-11; Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2526, 4-17-00; Ord. 2150, 8-28-84. Code 2001 § 51.17.]

Penalty: See NMC 13.10.360.

Article III. Discharge Regulations

13.10.080 General discharge prohibitions.

A. General Prohibited Pollutants. No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will cause interference or pass through. These general prohibitions apply to all users

of the municipal wastewater system, whether or not the user is subject to categorical pretreatment standards or any other national, state or local pretreatment standards or requirements.

B. Specific Prohibited Pollutants. Furthermore, no user may contribute the following substances to the system:

1. Waters or wastes containing substances in such concentrations that they inhibit or interfere with the operation or performance of any wastewater treatment process, are not amenable to treatment or reduction by the wastewater treatment process employed, or are only partially amenable to treatment such that the wastewater treatment plant effluent cannot meet the requirements of any agency having jurisdiction over its discharge to the receiving waters or that prevents the use or disposal of wastewater treatment plant sludge in accordance with applicable state and federal regulations.
2. Any liquids, solids, or gases which by reason of their nature or quantity are or may be sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the operation of the POTW. At no time shall two successive readings on an explosion hazard meter at the point of discharge into the system (or at any point within the system) be more than five percent, nor any single reading over 10 percent, of the lower explosive limit of the meter. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flash point of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21; prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, sulfides and any other substances which the city has notified the user are a fire hazard or other hazard to the system.
3. Solid or viscous substances which may cause obstruction to the flow in a wastewater system or other interference with the operation of the wastewater treatment facilities such as, but not limited to: oil, fat, grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, manure, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, glass grinding or polishing wastes, creosote, fish or fowl heads, lard, tallow, baking dough, chemical residues, paint residues or cannery waste bulk solids (i.e., solids greater than one-half inch in any dimension).
4. Any wastewater having a pH less than 6.0 or greater than 9.0, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW.
5. Any wastewater containing toxic pollutants in sufficient quantity (either singly or by interaction with other pollutants) to: injure or interfere with any wastewater treatment process; constitute a hazard to humans or animals; create a toxic effect in the receiving waters of the POTW; or to exceed the limitation set forth in a national categorical pretreatment standard or any other pretreatment standard. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act.
6. Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life, or are sufficient to prevent personnel entry into a wastewater system or pump station for maintenance and repair.
7. Any substance which may cause the POTW's effluent, or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations promulgated by the DEQ.
8. Any substance which will cause the POTW to violate its NPDES permit or receiving water quality standards.
9. Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the city's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than 10 percent from the seasonably established norm for aquatic life.

10. Any wastewater having heat in amounts which will inhibit biological activity in the POTW treatment plant resulting in interference; but in no case wastewater with heat in amounts such that the temperature at the treatment plant influent exceeds 40 degrees centigrade (104 degrees Fahrenheit). In no case shall wastewater exceeding 60 degrees centigrade (150 degrees Fahrenheit) be introduced into the POTW.

11. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW.

12. Any material from a cesspool, wastewater holding tank, or septic tank. Septic tank pumpers may not discharge into the POTW unless specifically authorized in writing by the director.

13. Any radioactive material, except in compliance with the current "Oregon Regulations for the Control of Radiation" (OAR 333-22-150).

14. Any wastewater which causes a hazard to human life or creates a public nuisance.

15. Any unusual concentrations of settleable or suspended solids which may interfere with the operation of the POTW, or require extraordinary attention or expense to handle such material at the POTW treatment works.

16. Any excess concentrations of dissolved solids which may interfere with the operation of the POTW, or cause water quality degradation, which includes, but is not limited to, sodium chloride, calcium chloride, and sodium sulfate.

17. Any fat, oils or greases, including but not limited to petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin, in amounts that will cause interference or pass through.

18. Pollutants which result in the presence of toxic gases, vapors, or fumes within the city's wastewater treatment system in a quantity that may cause acute worker health and safety problems.

19. Any hauled or liquid waste except at discharge points designated by the city.

20. Any sludges, screenings, or other residues from the pretreatment of industrial wastes or from industrial processes.

21. Medical wastes, except as specifically authorized by the superintendent.

22. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity tests.

23. Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act (FIFRA).

24. Wastewater sludge, except in accordance with the city's NPDES permit, providing that it specifically allows the discharge to surface waters of wastewater sludge pollutants.

25. Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

C. Noncompliance – Procedures of the Director. When the director determines that a user is contributing to the POTW any of the above-enumerated substances in such amounts as to interfere with the operation of the POTW or pass through to waters of the state, the director shall:

1. Advise the user of the impact of the contribution on the POTW; and
2. Develop effluent limitations for the user to correct the interference or pass through with the POTW.
3. Follow the penalty procedures set forth in NMC 13.10.360.

D. Other Prohibitions.

1. No person shall discharge or cause to be discharged any stormwater, surface water, ground water, roof or parking lot runoff, sump pumps, subsurface discharge or uncontaminated cooling water to a wastewater system.
2. Stormwater, all other unpolluted drainage, uncontaminated cooling water and any discharge permitted by the DEQ shall be discharged to such wastewater systems as are specifically designated as stormwater systems, or to a natural outlet approved by the director.
3. No person shall cause pollution of any water of the state or cause any waste to be placed in a location where the wastes are likely to escape to be carried into the storm drainage system and by the storm drains into the waters of the state.
4. Except as may be specifically permitted by the DEQ, no person shall discharge into the storm drainage system any material listed in this section, or any other material which may cause nuisance problems. However, this does not restrict the city from working cooperatively with any user in the user's efforts to obtain necessary discharge permits from the DEQ.

E. Disposal of Oil and Grease.

1. Effective February 8, 1983, all new restaurants employing an oil and/or grease process shall install an approved oil/grease trap before discharging to the POTW. In the case of other users (including preexisting restaurants), grease, oil and sand interceptors shall be provided when, in the opinion of the director, they are necessary for: the proper handling of liquid wastes containing oil or grease in excessive amounts as to cause plugging or maintenance problems within the collection system; any flammable wastes and/or other harmful ingredients. The interceptors shall be so located as to be readily and easily accessible for cleaning and inspection, and shall be approved by the director prior to installation.
2. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.
3. Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at the owner's expense, in continuously efficient operation. All cleaning residues shall be satisfactorily disposed of in an approved, environmentally acceptable manner. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.25.]

Penalty: See NMC 13.10.360.

13.10.090 Specific discharge limitations.

A. Limits to Industrial Waste Discharge Permit Holders. It is unlawful for a discharger who has an effective industrial waste discharge permit pursuant to NMC 13.10.130 et seq. to discharge wastes to the POTW in excess of the limitations established in the permit, or in violation of the prohibited discharge limitations in NMC 13.10.080. The director shall establish industrial waste discharge permit limitations to the extent necessary to enable the city to:

1. Comply with current National Pollutant Discharge Elimination System permit requirements, categorical and general pretreatment standards, and waste discharge requirements as promulgated by the U.S. Environmental Protection Agency and the Oregon State Department of Environmental Quality;
2. Protect the public health and safety;
3. Protect the receiving water quality;
4. Protect the POTW;
5. Comply with all other applicable federal and state laws;
6. Protect worker safety (i.e., toxic gases in wastewater systems); and

7. Make biosolids reusable.

B. Limitations on Specific Materials. In addition to categorical pretreatment standards referenced in subsection (A) of this section, no discharger shall discharge wastewater containing concentrations (and/or mass limitations) of substances exceeding those local limits established pursuant to resolution of the city council.

The city shall revise from time to time standards for specific restricted substances. These standards shall be developed in accordance with 40 CFR 403.5, and shall implement the objectives of this chapter. Standards adopted in accordance with this section will be deemed pretreatment standards for the purposes of Section 307(d) of the Act. These limitations are meant to apply to significant industrial users only.

The city engineer may impose mass limitations in addition to, or in place of, the concentration-based limits. Where an industrial user is subject to a categorical pretreatment standard and a local limit for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply. The city may develop best management practices (BMPs) in lieu of numerical limitations.

Wherever a discharger is subject to both a categorical pretreatment standard and a local limit for a given pollutant, the more stringent shall apply.

The director may develop best management practices (BMPs) by ordinance or in individual wastewater discharge permits, to implement local limits and the requirements of NMC 13.10.080(A).

C. Avoidance of Pretreatment Prohibited. No user shall add or increase the use of potable or process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate pretreatment to achieve compliance with the standards and limitations set forth in this chapter, or in an industrial waste discharge permit issued pursuant to this chapter.

D. Additional Limitations Permitted. The city reserves the right to establish by ordinance, resolution, or individual wastewater discharge permit more stringent limitations or requirements on discharges to the POTW if deemed necessary to comply with the objectives presented in NMC 13.10.030.

E. Compliance with State of Oregon Standards. State of Oregon requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this chapter.

F. Federal Standards. Upon promulgation of federal categorical pretreatment standards, those standards shall supersede the limitations imposed by this chapter if they are more stringent. The national categorical pretreatment standards as amended and promulgated by the EPA pursuant to the Act and as found at 40 CFR Chapter I, Subchapter N, Parts 405 through 471, are incorporated and shall be enforceable under this chapter.

G. Special Agreement. The city reserves the right to enter into special agreements with users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a categorical pretreatment standard or federal pretreatment requirement. However, users may request a net/gross adjustment to a categorical standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from the approval authority in accordance with 40 CFR 403.13.

H. Concentration/Mass Limitation Specifics. The superintendent may convert the mass limits of the categorical pretreatment standards of 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users. The conversion is at the discretion of the superintendent.

1. Once included in its permit, the industrial user must comply with the equivalent limitations developed in this section in lieu of the promulgated categorical standards from which the equivalent limitations were derived.
2. Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four-day average, limitations. Where such standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

3. Any industrial user operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the superintendent within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the superintendent of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long-term average production rate. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.26.]

Cross-reference: See OAR Chapter 340.45, et seq., Environmental Quality Standards.

Penalty: See NMC 13.10.360.

13.10.100 Federal categorical pretreatment standards.

A. Compliance with Federal Standards. Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this chapter for sources in that subcategory, shall immediately supersede the limitations imposed under this chapter.

B. Modification of Specific Limitations. Where the city's wastewater treatment system achieves consistent removal of pollutants limited by federal categorical pretreatment standards, the city may apply to the DEQ for modification of specific limits in the categorical pretreatment standards.

“**Consistent removal**” shall mean reduction in the amount of a pollutant or alteration of the nature of the pollutant by the wastewater treatment system to a less toxic or harmless state in the effluent which is achieved by the system in 95 percent of the samples taken when measured according to the procedures set forth in 40 CFR 403.7(b)(2), “General Pretreatment Regulations for Existing and New Sources of Pollution,” promulgated pursuant to the Act. The city may then modify pollutant discharge limits in the general pretreatment standards if the requirements contained in 40 CFR 403.7, are fulfilled and prior approval from the DEQ is obtained.

C. Baseline Monitoring Report (BMR). Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report which contains the information listed in subsections (C)(1) through (8) of this section. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed in subsections (C)(1) through (8) of this section. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

1. The name and address of the facility and the name of the owner and operator;
2. A list of any environmental control permits held by or for the facility;
3. A brief description of the nature, average rate of production, and standard industrial classification of the operation(s) carried out by the industrial user. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes;
4. Information showing the measured average daily and maximum daily flows, in gallons per day, to the POTW from each of the following:
 - a. Regulated process streams; and
 - b. Other streams as necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e);
5. Measurement of Pollutant.
 - a. The industrial user shall identify the categorical pretreatment standards applicable to each regulated process.

b. In addition, the industrial user shall submit the results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standards of the city) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long average concentrations (or mass where required) shall be reported. The sample shall be representative of daily operations and shall be performed in accordance with procedures set out in 40 CFR Part 136.

c. The user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the environmental services supervisor or superintendent. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the city, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.

d. Samples for oil and grease, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using four grab collection techniques for which historical sampling data does not exist.

e. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated or manufacturing process if no pretreatment exists or as determined by the city and contained in the user's wastewater discharge permit. For categorical dischargers, if other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e) in order to evaluate compliance with the applicable federal pretreatment standards.

f. All sample results shall indicate the time, date and location of sampling; methods of analysis, date of and person performing analysis; and a certification that such sampling and analysis is representative of normal work cycles and expected pollutant discharges from the user. If a user sampled and analyzed, using methodologies in 40 CFR Part 136, more frequently than what was required in its wastewater discharge permit, user shall submit all results of sampling and analysis of the discharge as part of user's self-monitoring report.

g. The possession and handling of a sample from the time of collection through the time of disposal shall be documented on a chain of custody form. The actual person collecting the sample shall fill out the chain of custody form at the time of sampling. The chain of custody form shall be completed by all persons in possession of the sample until it is ultimately received at an analytical laboratory and disposed of. The chain of custody record shall be retained by the user and shall become part of the analysis documentation. If the user fails to retain proper and complete chain of custody documentation, analysis for the sample in question will be invalidated and the user shall sample again;

6. Special Certification. A statement reviewed by an authorized representative of the industrial user and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operations and maintenance (O&M) and/or additional pretreatment is required in order to meet the pretreatment standards and requirements;

7. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in NMC 13.10.150;

8. All baseline monitoring reports must be signed and certified in accordance with NMC 13.10.200(D)(6).

D. Reports on Compliance with Categorical Pretreatment Standards.

1. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source, following commencement of the introduction of wastewater into the municipal wastewater system, any industrial user subject to such pretreatment standards and requirements shall submit to the city a report containing the information prescribed in subsection (C) of this section. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with NMC 13.10.200(D)(6).

2. This report shall be completed in compliance with the specific requirements of 40 CFR 403.12(c) promulgated by the Environmental Protection Agency on January 28, 1981, or any subsequent revisions.

3. If the information required in subsection (D)(1) of this section has already been provided to the director, and that information is still accurate, the discharger may reference this information instead of submitting it again.

E. Periodic Compliance Reports.

1. All significant industrial users shall, at a frequency determined by the director but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with NMC 13.10.200(D)(6).

2. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

3. If a user subject to the reporting requirement in this section monitors any regulated pollutant, at the appropriate sampling location, more frequently than required by the director, using the procedures prescribed in subsection (C)(5) of this section, the results of this monitoring shall be included in the report.

4. The city may reduce the requirement in subsection (E)(1) of this section to a requirement to report no less frequently than once a year, unless required more frequently in the categorical pretreatment standard or by the approval authority, where the user meets all of the following conditions:

a. The user's total categorical wastewater flow does not exceed any of the following:

i. 0.01 percent of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the user discharges in batches;

ii. 0.01 percent of the design dry weather organic treatment capacity of the POTW; and

iii. 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by the POTW in accordance with 40 CFR 403.5(c);

b. The user has not been in significant noncompliance, as defined in NMC 13.10.290(A)(2), for any time in the past two years;

c. The user does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this user would result in data that are not representative of conditions during the reporting period;

d. The user must notify the city immediately of any changes at its facility causing it to no longer meet the conditions of subsection (E)(4)(a) or (b) of this section. Upon notification, the user must immediately begin complying with the minimum reporting in subsection (E)(1) of this section; and

e. The city must retain documentation to support the city's determination that a specific user qualifies for reduced reporting requirements under subsection (E)(4) of this section for a period of three years after the expiration of the term of the control mechanism or in compliance with the state archives rules, whichever is longer.

5. The city may authorize an industrial user subject to a categorical pretreatment standard to forgo sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:

a. The waiver may be authorized where a pollutant is determined to be present solely due to wastewater discharged from the facility; provided, that the wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

b. The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than five years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit.

c. In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

d. The request for a monitoring waiver must be signed in by a duly authorized representative of the industrial user and include the certification statement in NMC 13.10.200(D)(6).

e. Nondetectable sample results may be used only as a demonstration that a pollutant is not present if the EPA-approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

f. Any grant of the monitoring waiver by the director must be included as a condition in the user's permit. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the director for three years after expiration of the waiver.

g. Upon approval of the monitoring waiver and revision of the user's permit by the director, the industrial user must certify on each report, with the following statement, that there has been no increase in the pollutant in its wastestream due to activities of the industrial user:

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under NMC 13.10.100(E).

h. In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the user's operations, the user must immediately comply with the monitoring requirements of NMC 13.10.200(E), or other more frequent monitoring requirements imposed by the director, and notify the director.

i. This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.27.]

Penalty: See NMC 13.10.360.

13.10.110 Pretreatment requirements.

A. User Compliance. Users shall provide necessary wastewater pretreatment as required to comply with this chapter and shall achieve compliance with all federal categorical pretreatment standards within the time limitations as

specified by the federal pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the city shall be provided and maintained continuously in satisfactory and effective operation by the owner at the owner's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the director for review and shall be acceptable to the director before construction of the facility. The review of the plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the director prior to the user's initiation of the changes.

B. Agreement or Contract with the City. Unless specifically exempted by the director in writing, any pretreatment requirements shall be incorporated in either:

1. If the facility is located within the jurisdiction of the city, an industrial waste discharge permit issued under this chapter and made a condition of issuance of the permit; or
2. If the facility is located outside the jurisdiction of the city, a contractual agreement between the city and the affected facility and made a condition of the acceptance of the waste from that facility.

C. Compliance with Other Laws. No person, by virtue of plan approval under subsection (A) of this section, shall be relieved of compliance with other laws of the city and of the state relating to construction and to permits.

D. Wastewater Survey. When requested by the director all industrial users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey prior to commencing their discharge. The director is authorized to prepare a form for this purpose and may periodically require industrial users to update the survey. Failure to complete this survey shall be reasonable grounds for terminating service to the industrial user and shall be considered a violation of this chapter.

E. Deadline for Compliance with Applicable Pretreatment Requirements. Compliance by existing sources covered by categorical pretreatment standards shall be within three years of the date the standard is effective unless a shorter compliance time is specified in the appropriate standard. The city shall establish a final compliance deadline date for any existing user not covered by categorical pretreatment standards or for any categorical user when the local limits for said user are more restrictive than the federal categorical pretreatment standards. New source and new users are required to comply with applicable pretreatment standards within the shortest feasible time, not to exceed 90 days from the beginning of discharge. New sources and new users shall install, have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Any wastewater discharge permit issued to a categorical user shall not contain a compliance date beyond any deadline date established in the EPA's categorical pretreatment standards. Any other existing user or a categorical user that must comply with a more stringent local limit, which is in noncompliance with any local limits, shall be provided with a compliance schedule placed in an industrial wastewater permit to ensure compliance within the shortest time feasible.

F. Additional Pretreatment.

1. Whenever deemed necessary, the director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific wastewater systems, relocate and/or consolidate points of discharge, separate wastewater wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this chapter.
2. Each user discharging into the POTW, if requested, shall install and maintain, on its property and at its expense, a suitable storage and flow-control facility to ensure equalization of flow over a 24-hour period. The facility shall have a capacity for at least 150 percent of the daily discharge volume and shall be equipped with alarms and a rate of discharge controller, the regulation of which shall be directed by the director. A wastewater discharge permit may be issued solely for flow equalization.
3. Fats, oils, grease and sand interceptors shall be provided when, in the opinion of the director, they are necessary for the proper handling of wastewater containing excessive amounts of fats, oils, grease and sand,

except that such interceptors shall not be required for users that are solely or strictly residential users. All interception units shall be of a type and capacity approved by the director and shall be so located as to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at its expense. A log of all inspections, cleanings and repairs made to the interceptors shall be maintained on site, and shall be made available to city staff for inspection upon request. The log shall include the date, actions performed, and name, address, and phone number of the person or firm performing the inspection, cleaning or repair.

4. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

5. Users may be required to install a control manhole, or other sampling device approved by the director, when deemed necessary by the director, to facilitate observation, sampling and flow measurement of the discharge. Such manholes, or other sampling devices approved by the director, shall be accessible and safely located and shall be constructed in accordance with plans approved by the city. The manhole, or other sampling device approved by the director, shall be installed and maintained by the user at their expense.

6. The director may also require (a) the installation of technology required to meet applicable pretreatment standards and requirements and (b) the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in this chapter. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.28.]

13.10.120 Spill prevention/slugs control.

The director may require any user to develop and implement a spill prevention/slugs control plan. Where deemed necessary by the city, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and maintained at the user's cost and expense. A spill prevention/slugs control plan (SP/SCP) showing facilities and operating procedures to provide this protection shall be submitted to the city for review and approval before implementation. The city shall determine which user is required to develop a plan and require said plan to be submitted within a specified period of time after notification by the city. Each user shall implement its SP/SCP as submitted or as modified after such plan has been reviewed and approved by the city. Review and approval of such plans and operating procedures by the city shall not relieve the user from the responsibility to modify its facility as necessary to meet the requirements of this chapter. The director shall include SP/SCP or specific required actions in the industrial waste discharge permit.

A. Any user required to develop and implement a spill prevention/slugs control plan shall submit a plan, which addresses, at a minimum, the following:

1. Description of discharge practices, including nonroutine batch discharges;
2. Description of stored chemicals;
3. Procedures for immediately notifying the POTW of any accidental or slug discharge and procedures for follow-up written notification within five days. Such notification must also be given for any discharge which would violate any of the standards in other sections of this chapter; and
4. Specific actions and procedures to prevent adverse impact from any accidental or slug discharge. Such actions and procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic chemicals (including solvents), and/or measures and equipment for emergency response.

B. Notification – Procedure.

1. Any user experiencing an upset in operations, or a spill, which could cause problems for the POTW shall immediately notify the city of the upset or spill. The notification shall include the location of the spill or

discharge; type, concentration and volume of pollutant; and hazards which may be posed to life and/or property; and corrective actions proposed and/or being taken.

2. Within five days following such an occurrence, the user shall submit to the director a detailed written report outlining the following:

- a. Description of the upset or spill, the cause of the upset or spill, and the upset's impact on the discharger's compliance status.
- b. Duration of noncompliance, including exact dates and times of noncompliance, and if the noncompliance continues, the time by which compliance is reasonably expected to occur.
- c. All steps taken or to be taken to reduce, eliminate and prevent recurrence of such an upset or spill, or other conditions of noncompliance.

3. A notice informing employees of the notification requirements, and containing a telephone number and/or individual to contact in the event of such an upset or spill, shall be posted in a conspicuous place, visible to all employees that may reasonably be expected to observe such a discharge.

4. Failure by any noncomplying user (or employees) to report the noncompliance in the manner provided above shall constitute a violation of this chapter and subject the user to the penalties set forth in NMC 13.10.360. Each failure to report a discharge shall be considered a separate violation.

5. A documented, verified and bona fide operating upset may be considered in mitigation of any enforcement action brought by the director under this chapter, provided the user complies with the notification and reporting requirements of this action.

C. Schedule of Compliance. Direct or indirect connections or entry points which could allow spills or uncontrolled discharges of hazardous or toxic substances or substances prohibited under NMC 13.10.080(A) to enter the POTW shall be eliminated, labeled, or controlled so as to prevent the entry of wastes in violation of this chapter. The director may require the industrial user to install or modify equipment or make other changes necessary to prevent the discharge as a condition of issuance of an industrial waste discharge permit or as a condition of continued discharge into the POTW. A schedule of compliance shall be established by the director, which requires completion of the required actions within the shortest reasonable period of time. Violation of the schedule without an extension of time by the director is a violation of this chapter. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.29.]

Penalty: See NMC 13.10.360.

Article IV. Industrial Waste Discharge Permits

13.10.130 Requirements for a permit.

No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the director. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this chapter and subjects the wastewater discharge permittee to the sanctions set forth in this chapter. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law. The director may require other users, including haulers of liquid waste, to obtain wastewater discharge permits (as necessary) to carry out the purposes of this chapter.

The City of Newberg may use BMP and general control mechanisms to control discharges of waste into the POTW. BMP and general control mechanisms will contain the same elements as the industrial waste discharge permit. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.40.]

Penalty: See NMC 13.10.360.

13.10.140 Wastewater discharge permitting – New source and new user.

At least 90 days prior to the anticipated start-up, any new source, which is a source that becomes a user subsequent to the proposal of an applicable categorical pretreatment standard that is later promulgated, and any new user considered by the city to fit the definition of SIU shall apply for a wastewater discharge permit and will be required to submit to the city at least the information listed in previous sections of this chapter. A new source or new user cannot discharge without first receiving a wastewater discharge permit from the City of Newberg. New sources and new users shall also be required to include in their application information on the method of pretreatment they intend to use to meet applicable pretreatment standards. New sources and new users shall give estimates of the information requested in other sections of this chapter.

A. Except as provided in subsection (B) of this section, any significant industrial user proposing to begin or recommence discharging industrial wastes into the municipal wastewater system must obtain a wastewater permit prior to beginning or recommencing the discharge. An application for this permit must be filed at least 90 days prior to the anticipated start-up date.

B. Applicable dischargers that are in existence prior to the effective date of the ordinance codified in this chapter shall be notified in writing by the director that an industrial waste discharge permit is required. The existing dischargers shall be allowed to continue discharging into the POTW without an industrial waste discharge permit until a permit is issued or denied, provided the discharger filed a completed application for an industrial waste discharge permit within 90 days of the receipt of the notice. The discharger shall at all times comply with the city's ordinances and all applicable federal and state pretreatment standards and requirements. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07. Code 2001 § 51.41.]

Penalty: See NMC 13.10.360.

13.10.150 Permit application.

A. Completion of Application. Application for an industrial waste discharge permit shall be made to the city on forms provided by the department of public works. These forms shall require information pursuant to 40 CFR 403.12(b)(1) through (7). The application shall not be considered complete until all information identified on the form is provided, unless specific exemptions are granted by the director. The permit application shall specify the number of hours per month during which the industrial user is in full-time or partial operation, and if partial, the extent of such operations.

1. Wastewater Discharge Permit Application Contents. All users required to obtain a wastewater discharge permit must submit, at a minimum, the following information. The director shall approve a form to be used as a permit application. Categorical users submitting the following information shall have complied with 40 CFR 403.12(b).

- a. Identifying Information. The name and address of the facility, including the name of the operator and owner.
- b. Environmental Permits. A list of any environmental control permits held by or for the facility.
- c. Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.
- d. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).
- e. Measurement of Pollutants.
 - i. The categorical pretreatment standards applicable to each regulated process.
 - ii. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the director, of regulated pollutants in the discharge from each regulated

process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in NMC 13.10.200(E)(6). In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the user shall submit documentation as required by the city or the applicable standards to determine compliance with the standard.

iii. The user shall take a minimum of one representative sample to compile the data necessary to comply with the requirements of this subsection.

iv. Sampling must be performed in accordance with procedures set out in NMC 13.10.100(C)(5)(c) and certified.

v. The city may allow the submission of a baseline monitoring report, which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

f. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in NMC 13.10.160(D).

g. Other information deemed necessary by the director.

h. Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with subsection (A)(2) of this section.

2. Signatory and Certification Requirement. All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

B. Applicant Time Limitations. Completed applications for new permits shall be made within 90 days after receiving the director's written notification to do so, or longer if specifically authorized, or, for new discharges, at least 90 days prior to the date the discharge is to begin. The required 90-day lead time for making application for a new discharge may be decreased by the director if requested by the applicant for good and valid cause.

C. Permit Renewal. Existing industrial discharges holding a current waste discharge permit shall apply for permit renewal 60 days before the present permit expires. Information to be supplied by present permittees will consist of any changes from present permits that may have been made since the current permit was issued or any additional information that may be required by the director. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.42.]

13.10.160 Permit issuance and conditions.

A. Director's Response Time. Industrial waste discharge permits shall be issued or denied by the director within 90 days after a completed application for a new permit is received, or within 60 days after a completed renewal application is received. This time schedule may be extended by the director if additional information or an outside consultant is needed to evaluate the application.

B. Conditions of Permit. Industrial waste discharge permits shall contain conditions which meet the requirements of this chapter, as well as those of applicable state and federal laws and regulations.

1. Wastewater permits must contain the following conditions:

- a. A statement that indicates permit duration, which in no event shall exceed five years.
- b. A statement that the permit is nontransferable without prior notification to and approval from the city and provisions for furnishing the new owner or operator with a copy of the existing permit.
- c. Effluent limits, including best management practices, applicable to the user based on applicable standards in federal, state and local law, whichever is most stringent.
- d. Self-monitoring sampling, reporting, notification and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state and local law.
- e. Statement of applicable penalties for violation of pretreatment standards and requirements, and compliance schedules. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, or local law.
- f. If required, significant industrial users must also have a requirement to develop and implement slug control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges, if deemed to be necessary by the city.

2. Permits may contain, but need not be limited to, the following:

- a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.
- b. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass or other measure of identified wastewater pollutants or properties.
- c. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, and the like, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- d. Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.
- e. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
- f. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
- g. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
- h. Specifications for monitoring programs, which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
- i. Requirements for reporting within 24 hours of becoming aware of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation(s).
- j. Compliance schedules for meeting pretreatment standards and requirements.
- k. Requirements for submission of periodic self-monitoring or special notification reports.

l. Requirements for maintaining records relating to wastewater discharge and affording the director access.

m. Requirements for prior notification and approval by the director of any new introduction of wastewater pollutants or of any change in the volume or character of the wastewater prior to introduction into the system.

n. Requirements for the prior notification and approval by the director of any change in the manufacturing and/or pretreatment process used by the permittee.

o. Requirements for immediate notification of excessive, accidental, or slug discharges, or any discharge which could cause any problems to the system.

p. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards including those which become effective during the term of the permit.

q. Other conditions as deemed appropriate by the director to ensure compliance with this chapter, and state and federal laws, rules, and regulations, the term of the permit.

C. Pretreatment Requirements. If pretreatment facilities are needed to meet the discharge requirements in the discharge permit, the permit shall require the installation of such facilities.

D. Compliance Schedule. Whenever a discharge permit requires installation or modification of pretreatment facilities, or a process change necessary to meet discharge standards or spill control requirements, a reasonable compliance schedule shall be included which establishes the date for completion of the changes, and any appropriate interim dates. Such interim dates shall be no more than nine months apart.

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

2. No increment referred to in subsection (D)(1) of this section shall exceed nine months.

3. Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the city including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports.

E. Permit Time Periods. The initial permit shall be issued for one year. Subsequent permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date. The user shall apply for renewal a minimum of 60 days prior to the expiration of the user's existing permit.

F. Denial of Permit. The director may deny the issuance of a discharge permit if the discharge will result in violation of city, state or federal laws or regulations; will overload or cause damage to any portion of the POTW; or will create an imminent or potential hazard to personnel.

G. Notice of Potential Problems, Including Accidental Spills or Slug Loads. Any user shall notify the city immediately of any changes at its facility that could cause problems to the POTW or have a potential for a slug discharge, as defined in NMC 13.10.040. The notification shall include the concentration and volume and corrective action. Steps being taken to reduce any adverse impact should also be noted during the notification. Any user who discharges a slug load of pollutants shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the city under state or federal law.

H. Reports from Unpermitted Users. All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the city as the director may require. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.43.]

13.10.170 Modification of permits.

A. Cause for Modification. An industrial waste discharge permit may be modified for good and valid cause at the request of the permittee or at the discretion of the director.

B. Requests for Modification. Permittee modification requests shall be submitted in writing to the director and shall contain a detailed description of all proposed changes in the discharge. The director may request any additional information needed to adequately prepare the modification or assess its impact.

C. Denial of Request. The director may deny a request for modification if the change will result in violations of city, state or federal laws or regulations; will overload or cause damage to any portion of the POTW; or will create an imminent or potential hazard to personnel.

D. Notification of Modification. If a permit modification is made at the direction of the director, the permittee shall be notified in writing of the proposed modification at least 30 days prior to its effective date (except in the event of an emergency) and informed of the reasons for the changes. Any requirements for installation of modification of pretreatment and/or monitoring facilities, or process changes, shall include a reasonable time schedule for compliance.

E. Permit Issuance Required. A modification to the permittee's discharge permit must be issued by the director before any significant change is made in the volume or level of pollutants in an existing permitted discharge to the POTW. Changes in the discharge involving the introduction of a waste stream(s) not previously included in the industrial waste discharge permit application or involving the addition of new pollutants shall be considered as new discharges, requiring application under NMC 13.10.140.

F. Revision of Federal Standards. Within 90 days of the promulgation of a national categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised by the director to require compliance with such standard within the time frame prescribed by such standard. Where a user subject to a national categorical pretreatment standard has not previously submitted an application for a wastewater discharge permit as required by NMC 13.10.130, the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable national categorical pretreatment standard. In addition, any user subject to the national categorical pretreatment standards shall, within 180 days after promulgation of such standards, submit a report to the director in accordance with NMC 13.10.100(C). [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.44.]

13.10.180 Permit transfer.

A. Wastewater discharge permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be assigned, transferred or sold to another user, different premises, or a new or changed operation without the approval of the director. Any succeeding user shall agree in writing to comply with the terms and conditions of the existing permit as a condition precedent to the approval by the director of a transfer, sale or assignment of the permit.

B. Wastewater Discharge Permit Transfer. Wastewater discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least 90 days' advance notice to the director and the director approves the wastewater discharge permit transfer. The notice to the director must include a written certification by the new owner and/or operator which:

1. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
2. Identifies the specific date on which the transfer is to occur; and
3. Assumes full responsibility for complying with the existing wastewater discharge permit beginning on the date of the transfer.

C. Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable as of the date of facility transfer; provided, that the notice required above occurred and that there were no significant changes to the manufacturing operation or wastewater discharge, the new owner will be considered an existing user and will be covered by the existing limits and requirements in the previous owner's permit. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.45.]

13.10.190 Revocation of permit.

Any industrial waste discharge permit may be revoked as a result of violations of this chapter, applicable state and/or federal regulations, or the conditions of the permit or any additional reason as identified below:

A. Wastewater discharge permits may be revoked for, but not limited to, the following reasons:

1. Failure to notify the city of significant changes to the wastewater prior to the changed discharge;
2. Failure to provide prior notification to the city of changed conditions;
3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
4. Falsifying self-monitoring reports;
5. Tampering with monitoring equipment;
6. Refusing to allow the city timely access to the facility premises and records;
7. Failure to meet discharge limitations;
8. Failure to pay fines;
9. Failure to pay wastewater charges;
10. Failure to meet compliance schedules;
11. Failure to complete a wastewater survey or the wastewater discharge permit application;
12. Failure to provide advance notice of the transfer of a permitted facility;
13. If the city has to invoke its emergency provision as cited in NMC 13.10.290(A)(2)(d); or
14. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this chapter.

B. Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user. [Ord. 2733 Att. A, 2-7-11; Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.46.]

13.10.200 Monitoring and reporting requirements.

A. Reporting Requirements. Reports of dischargers shall contain all results of sampling and analysis of the discharge. In the case of more frequent monitoring of any pollutant than is required by the city using the procedures prescribed in 40 CFR 403.12(g)(4), the results of this monitoring shall be included in the report. All reported analysis shall be performed in accordance with 40 CFR Part 136, or with any other test procedures approved by the Administrator of the EPA. Any user that is required to have an industrial waste discharge permit pursuant to NMC 13.10.130 shall submit to the director a report indicating the nature of the effluent over the previous six-month period, the report of the concentrations (and mass if limited in the permit) of the limited pollutants that were measured and a record of all flow measurements that were taken.

B. Frequency of Monitoring. The frequency of the monitoring shall be determined by the director and specified in the industrial waste discharge permit. If there is an applicable effective national categorical pretreatment standard, the frequency shall not be less than that prescribed in the standard.

C. Measurement of Flows. Flows shall be reported on the basis of actual measurement; provided, however, where cost or feasibility considerations justify, the director may accept reports of average and maximum flows estimated by verifiable techniques or other method approved by the director. However, pump times or other indirect measurement devices will not be acceptable. The measured flows will be used to compute the wastewater service charges.

D. General Reporting Requirements.

1. The director may require reporting by other users that are not required to have an industrial waste discharge permit if information and/or data is needed to establish a wastewater charge, determine the treatability of the effluent, or determine any other factor which is related to the operation and maintenance of the POTW.
2. Requirement for the user who reports noncompliance to notify the city within 24 hours and to repeat the sampling and analysis and submit analysis to the city within 30 days after becoming aware of the violation.
3. Each industrial user shall notify the city, in writing, in person or by phone, 90 days prior to the introduction of new wastewater pollutants, changes in manufacturing operation, or any substantial change in the volume or characteristics of the wastewater being introduced into the city's wastewater treatment system from the affected industrial user's industrial processes, including substantial changes in the listed or characteristic hazardous wastes for which the user has submitted the initial notification under 40 CFR 403.12(p). Formal written notification shall be made at least 10 days prior to such introduction and the user shall obtain approval from the city to do so.
4. Notification of Hazardous Waste Discharges to the City Collection System. Any industrial user discharging hazardous waste shall notify the city in accordance with 40 CFR 403.12(p) (paragraphs 1 through 4). Any industrial user who commences discharging after August 23, 1990, shall provide notification in accordance with 40 CFR 403.12(p) no later than 180 days after the discharge of any listed or characteristic hazardous waste(s). Any user that is discharging more than 15 kilograms of hazardous wastes as defined in 40 CFR 261 (listed or characteristic wastes) in a calendar month or any facility discharging any amount of acutely hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) is required to provide a one-time notification in writing to the city, to the EPA Region 10 Office of Waste and Chemicals Management Director, and to the State DEQ Hazardous Waste Division. Any existing user exempt from this notification shall comply with the requirements contained herein within 30 days of becoming aware of a discharge of 15 kilograms of hazardous wastes in a calendar month or any discharge of acutely hazardous wastes to the city wastewater system.

Such notification shall include:

- a. The name of the hazardous waste as set forth in 40 CFR Part 261;
- b. The EPA hazardous waste number; and
- c. The type of discharge (continuous, batch, or other);
- d. If an industrial user discharges more than 100 kilograms of such waste per calendar month to the wastewater system, the notification shall also contain the following information to the extent it is known or readily available to the industrial user:
 - i. An identification of the hazardous constituents contained in the wastes;
 - ii. An estimation of the mass and concentration of such constituents in the wastestreams discharged during that calendar month; and
 - iii. An estimation of the mass of constituents in the wastestreams expected to be discharged during the following 12 months.

These notification requirements do not apply to pollutants already reported under the self-monitoring requirements. Whenever the EPA publishes final rules identifying additional hazardous wastes or new characteristics of hazardous waste, a user shall notify the city of the discharge of such a substance within 90 days of the effective date of such regulations. In the case of any notification made under this subsection, an industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

5. Whenever the EPA publishes new RCRA rules identifying additional hazardous wastes or new characteristics of hazardous wastes, any permitted or nonpermitted user must notify the city, EPA RCRA Director, and the State Hazardous Wastes Sewers Director if any of these wastes are discharged to the city's treatment system. The notification must occur within 90 days of the effective date of the published regulation.

6. All reports and information submitted to the city shall be signed and certified in the following manner:

a. Certification of User Reports and Initial Monitoring Waiver. The following certification statement is required to be signed and submitted by users submitting baseline monitoring reports under NMC 13.10.100(C); users submitting reports on compliance with the categorical pretreatment standard deadlines under NMC 13.10.100(D); users submitting periodic compliance reports required by NMC 13.10.100(E); and users submitting an initial request to forgo sampling of a pollutant on the basis of NMC 13.10.100(E)(5). The following certification statement must be signed by an authorized representative as defined in NMC 13.10.040:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. Annual Certification for Nonsignificant Categorical Industrial Users. A facility determined to be a nonsignificant categorical industrial user by the environmental services supervisor pursuant to NMC 13.10.040 must annually submit the following certification statement signed in accordance with the signatory requirements as stated in the definition of "Significant industrial user" in NMC 13.10.040. This certification must accompany an alternative report required by the environmental services supervisor:

Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR ____, I certify that, to the best of my knowledge and belief, that during the period from _____, _____ to _____, _____ [months, days, year]: (a) The facility described as _____ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in NMC 13.10.040; (b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

This compliance certification is based on the following information. _____

c. Certification of Pollutants Not Present. Users that have an approved monitoring waiver based on NMC 13.10.100(E)(5) must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the user.

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under NMC 13.10.100(E).

7. Each user must notify the director of any significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change. The director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under NMC 13.10.150. The director may issue an individual wastewater discharge permit under NMC 13.10.160 or modify an existing wastewater discharge permit under NMC 13.10.170 in response to changed conditions or anticipated changed conditions.

8. Report of Potential Problems.

a. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a slug discharge or slug load, that might cause potential problems for the POTW, the user shall immediately telephone and notify the director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

b. Within five days following such discharge, the user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this chapter.

c. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in subsection (D)(8)(a) of this section. Employers shall ensure that all employees who could cause such a discharge to occur are advised of the emergency notification procedure.

d. Significant industrial users are required to notify the director immediately of any changes at its facility affecting the potential for a slug discharge.

E. Monitoring Procedures.

1. Periodic monitoring shall be performed by either the user or the city to ensure compliance with this chapter and any associated permit. The director may require self-monitoring by the user or, if requested by the user, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this section. Such monitoring shall be by any means appropriate to meet the requirements of this chapter and satisfy the needs of both the city and user.

2. If the director agrees to perform such periodic compliance monitoring, the director shall charge the user for the monitoring, based upon the costs incurred by the city for sampling and analyses. Any such charges shall be added to the normal wastewater charge and shall be payable as part of the wastewater bills.

3. The director is under no obligation to perform the periodic compliance monitoring for a user.

4. Periodic compliance monitoring is that monitoring which is necessary to provide the information on discharge quantity and quality required for the periodic compliance reports. If an industrial user subject to the reporting requirement identified in this section monitors a regulated pollutant at the appropriate sampling location more frequently than required by the city, using the procedures prescribed in subsection (E)(6) of this section, the results of this monitoring shall be included in the report.

5. Samples of wastewater being discharged into the POTW shall be representative of the discharge, and shall be taken after pretreatment, if any, and before dilution by other water. The sampling method shall be one approved by the director and one in accordance with good engineering practice.

6. Laboratory procedures used in the examination of industrial wastes shall be in accordance with those set forth in 40 CFR Part 136 and any amendments thereto. If there are no approved test procedures for a particular pollutant, then analyses shall be performed using other validated procedures approved by the director.

F. Monitoring Facilities. The director may require a user to install and maintain at the user's expense a suitable manhole in the user's building wastewater system, or other suitable monitoring access, to allow observation, sampling and measurement of all industrial wastes being discharged into the POTW. It shall be constructed in accordance with plans approved by the director and shall be designed so that flow-measuring and sampling equipment may be conveniently installed. Access to the manhole or monitoring facilities shall be available to city representatives at all times.

G. Flow Measurement and Sampling Station. The flow measurement and sampling station shall be located and constructed at the user's expense in a manner acceptable to the director. Complete plans for all phases of the proposed installation, including all equipment proposed for use, shall be submitted to the director for approval prior to construction. Approved measuring and sampling facilities shall be installed and operating within 90 days following written notification to do so by the director. The director may extend this schedule if specifically warranted by equipment delivery delays or construction/installation difficulties beyond the user's reasonable control.

H. Installation and Maintenance of Equipment. All devices, access facilities and related equipment shall be installed by the user at the user's expense and shall be maintained by the user so as to be in a safe and proper operating condition at all times, and readily accessible to the director and designated city employees or agents during the operating day.

I. Record-Keeping Requirements. The user shall keep flow and maintenance/operation records as required by the director, and shall provide qualified personnel to properly maintain and operate the facilities. Users (including those with BMP permit) subject to the reporting requirements of this chapter shall retain and make available for inspection and copying all records of information obtained pursuant to any monitoring activities required by this chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements and documentation associated with best management practices established under 13.10.160(B)(1)(c). Records shall include the date, exact place, method, and time of sampling and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least five years. This period shall be automatically extended for the duration of any litigation concerning the user or POTW, or where the user has been specifically notified of a longer retention period by the director.

J. Periodic Calibration. Calibration of flow meters, pH recorders and samples shall be performed annually (or as required) by a qualified technician. Maintenance and calibration adjustments shall be recorded daily and records shall be readily available to city inspectors. All costs for such calibration as well as maintenance, repair, replacement or additional equipment needed to reliably and accurately monitor the discharge shall be the user's responsibility.

K. Prohibitions. Bypassing pretreatment or measuring apparatus, shutting off samplers, diluting samples, or other action to defeat accurate measuring and sampling of waste discharges is prohibited.

L. Notification to City. Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the city within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the city of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long-term average production rate. [Amended during 2011 recodification; Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.47.]

Penalty: See NMC 13.10.360.

13.10.210 City inspection and sampling.

A. Inspection of Facilities and Equipment. Authorized city representatives may inspect the facilities of any user to determine compliance with the requirements of this chapter. Facilities having an industrial waste discharge permit shall be inspected at least annually. The user shall allow authorized city representatives to enter upon the premises of the user at all reasonable hours, for the purpose of inspection, sampling, records examination, or in the performance of any of the duties to ensure compliance with this chapter. The city shall also have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operation. The right of entry includes, but is not limited to, access to those portions of the premises that contain

facilities for sampling, measuring, treating, transporting or otherwise handling waste, and storing records, reports or documents relating to the treatment, sampling, or discharge of the wastes and to make copies of such records, reports or documents as required.

B. Entry of City Representatives. Where applicable, the user shall make arrangements with its employees so that upon presentation of their credentials, representatives from the city will be permitted to enter, without delay, for the purpose of performing their specific responsibilities.

C. Conditions for Entry. The following conditions for entry shall be used by city representatives:

1. The authorized city representatives shall present appropriate credentials at the time of entry.
2. The purpose of the entry shall be for inspection, observation, measurement, sampling or testing in accordance with the provisions of this chapter.
3. The entry shall be made at reasonable times during normal operating or business hours, unless an emergency situation exists as determined by the director.
4. All regular safety and sanitary requirements of the facility to be inspected shall be complied with by the city representative(s) entering the premises.

D. User Rights to Samples. Samples that are taken by city personnel for the purposes of determining compliance with the requirements of this chapter may be split with the user (or a duplicate sample provided in the instance of fats, oils and greases) if prior arrangements have been made. The results of all city sample analyses and any inspection reports shall be provided to the user.

E. Search Warrants. If the environmental services supervisor has been refused access to a building, structure or property or any part of a building, structure or property and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect as part of a routine inspection program of the city designed to verify compliance with this chapter or any wastewater discharge permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the environmental services supervisor shall request the city attorney to seek issuance of a search and/or seizure warrant from the district court of Yamhill County. Such warrant shall be served at reasonable hours by the director in the company of a uniformed police officer of the city.

F. Vandalism. No person shall willfully or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the POTW. Any person found in violation of this requirement shall be subject to the sanctions set out in this chapter. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.48.]

13.10.220 Confidential information.

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from city inspection and sampling activities shall be available to the public without restriction, unless the user specifically requests and is able to demonstrate to the satisfaction of the director that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable state law. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other “effluent data” as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

A. Access to Records and Reports. Any records, reports or information obtained under this chapter shall be available to the public or any governmental agency, unless classified by the director as confidential. In order to obtain a classification of confidential on all or part of the records, reports or information submitted, the user shall:

1. Submit a written record to the director identifying the material that is desired to be classified as confidential; and
2. Demonstrate to the satisfaction of the director that records, reports or information, or particular parts of records, reports or information, if made public, would divulge information, processes or methods of production entitled to protection as trade secrets of the user.

B. Discharge Data Not Confidential. Information and data on discharge quantity and quality submitted pursuant to this chapter shall not be classified as confidential pursuant to 40 CFR 2.

C. Restrictions on Confidential Information. Records, reports or information or parts of records, reports or information classified as confidential by the director shall not be released or made part of any public record or hearing unless such release is ordered by a court of competent jurisdiction. However, such confidential information shall, upon written request, be made available to state or federal agencies having jurisdiction, duties or responsibilities relating to this chapter, the National Pollutant Discharge Elimination System or State of Oregon waste disposal laws and regulations. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.49.]

Article V. Rates, Fees and Charges

13.10.230 Authorization of just and equitable rates, fees and charges.

A. Charges Levied. There are levied and imposed upon all persons having a connection with the wastewater system of the City of Newberg, Oregon, both within and without the corporate limits of the city, and upon all subsequent users, just and equitable charges for service, maintenance, operation, replacement and expansion of the wastewater system.

B. Financial Self-Sufficiency. The just and equitable charges shall be fixed at such amounts to assure the financial self-sufficiency of the wastewater system, and rates shall be reviewed by the citizens' rate review committee and amended as necessary by resolution of the city council. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.60.]

Cross-reference: Citizens' rate review committee, see NMC 2.15.120 et seq.

13.10.240 Customer classes – Billing structure defined.

A. Customer Classes Defined. For the purposes of determining rates and assigning service charges, users shall be grouped, accordingly, into one of the following customer classifications:

1. Residential. All single-family residential services and multifamily residential services which have individual water meters for each dwelling unit;
2. Multi-residential or Standard Discharge Strength. All multifamily dwellings in which a single water meter provides service not classified elsewhere which have discharge strengths (ROD or 55) not exceeding one and one-half pounds per 100 cubic feet (240 mg/liter) of discharge flow;
3. Nonstandard Discharge Strength. All nonresidential users with discharge strengths (ROD or 55) in excess of one and one-half pounds per 100 cubic feet (240 mg/liter) of discharge flow;
4. Industrial. Establishments discharging nonstandard discharge strength, as defined in this chapter;
5. Commercial 1 Discharge Strength. All commercial users which have discharge strengths (BOD or SS) not exceeding one and one-half pounds per 100 cubic feet (240 mg/liter) of discharge flow;
6. Commercial 2 Discharge Strength. All commercial users with discharge strengths (BOD or 55) in excess of one and one-half pounds per 100 cubic feet (240 mg/liter) of discharge flow;
7. George Fox University; and
8. Public agencies.

B. Rate Structure. Wastewater service rates for each of the respective customer classifications enumerated in subsection (A) of this section shall be derived and calculated in accordance with the following standards and fixed by resolution of the city council:

1. Residential. A monthly flat fee based on average residential wastewater discharge.
2. Multi-residential or Standard Discharge Strength.
 - a. A minimum monthly fee equal to the wastewater service rate for residential users; plus
 - b. A per-unit charge for measured or estimated wastewater in excess of residential wastewater discharge.
3. Nonstandard Discharge Strength.
 - a. A monthly charge calculated in the same manner as for users in the multi-residential or standard discharge strength customers class; plus
 - b. An extra strength fee per unit of discharge based on measured or estimated wastewater parameters as established by the city.
4. Industrial. A monthly charge calculated in the same manner as for users in the nonstandard discharge strength customer class.

C. Charges to Customers outside the City. Any person having connection to the city wastewater system which is outside the corporate boundaries of the city, in addition to the fees and charges for services called for in subsection (B) of this section, shall be charged monthly fees derived and calculated in accordance with standards fixed by resolution of the city council.

D. Review and Revision of Rates. There are levied and imposed upon all users of the wastewater system, both inside and outside the City of Newberg, just and equitable charges for service, maintenance, operation, debt service, and reconstruction of the wastewater system. The setting of rates may be undertaken in conjunction with the consideration of the water rates. The just and equitable charges shall be fixed by an administrative process as established by ordinance.

1. All costs for maintenance, operation, debt service, and reconstruction of the wastewater system shall be identified by the public works director. These costs shall be reported to, reviewed, changed, and approved by the budget committee of the City of Newberg during the annual budget process required by state statute.
2. The city council shall, as part of the annual budget process, adopt a budget for the maintenance, operation, debt service, and reconstruction of the wastewater system.
3. Should the budget which the city council adopts require a change in the rates levied and imposed upon all users of the wastewater system, the public works director shall, within 30 days of adoption of the budget by the city council, develop and identify the rates according to a cost-to-serve analysis. The cost-to-serve analysis shall provide just and equitable charges for service for the customer service groups which use the wastewater system. The rates shall be reviewed by the citizens' rate review committee in accordance with this chapter.
4. Based on the information received from the public works director and the community at the public hearing, the committee shall recommend the wastewater rates to be established to the city council.
5. The city manager shall compile the written record for the city council.
6. Notice of the rates that are recommended to be implemented shall be published in the newspaper and posted in three public places within the city.
7. The city council shall hold a public hearing within 30 days of the date of the recommendation to the city. The public hearing shall provide an opportunity to comment on the recommended wastewater rates. The city council may choose to hear the rate proposal on the record of the public hearing held by the committee. The

city council shall hear presentations and explanations of the rates by the city manager, or designee, as part of the public hearing. The city council may then set rates which are either equal to or less than the rates recommended by the committee or may alter or change the rates in any way the city council deems appropriate. If the city council recommends rates higher than those recommended by the committee, the rates shall be sent back to the committee for reconsideration.

8. The city council shall then receive back a further recommendation from the committee.

9. The city council shall then by resolution set the wastewater rates, which are just and equitable, at an amount that assures the financial self-sufficiency of the wastewater system.

10. Such rates set by the city council shall not go into effect for a period of at least 30 days.

11. If within 30 days following the passage of the resolution setting the rates, the city receives through a petition, a form of which to be prescribed by the city and in general conformance with the state laws governing referendum petitions, a proposal to refer the matter of the wastewater rates to the voters of the city signed by a number of legal voters equal to 15 percent of the registered voters of the city, on the date such petitions are submitted, the city council shall then refer the matter to the voters of the city at the next available election. The wastewater rates shall not take effect until such time as the election has taken place. If the voters of the city reject the measure as referred to them, then the wastewater rates that were in effect prior to the passage of the resolution shall remain in full force and effect.

E. Notification. Each user will be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the user charges which are attributable to wastewater treatment services. On or before July 1st of each year, the public works director shall post for public review at City Hall a listing of the wastewater parameters and corresponding categories of businesses which serve as the basis for the derivation of extra strength fees for users in the nonstandard discharge strength customer class as specified in subsections (A) and (B) of this section.

F. Appeals.

1. Any wastewater system user who believes their wastewater user charge, as applied to the user's premises, is not within the intent of the foregoing provisions may make written application to the city council requesting a review of their user charge. The written request shall, where necessary, show the actual or estimated average flow of the user's wastewater in comparison with the values upon which the charge is based, including how the measurements or estimates were made.

2. Review of the request shall be made by the city council and the director of public works or designee; action may include recommending further study of the matter by the director. If the city council determines that the user's charges should be recomputed, based on approved revised flow and/or strength data, the new charges thus recomputed may be applied retroactively for the period of up to six months. [Ord. 2733 Att. A, 2-7-11; Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2418, 10-2-95; Ord. 2334, 7-6-92; Ord. 2150, 8-28-84. Code 2001 § 51.61.]

13.10.250 Other fees and charges.

A. Deposit or Security for Wastewater Service. Any person, firm or corporation making application for the use of the municipal wastewater system of the city shall, at the time of making such application, pay to the city a cash deposit. The amount of such deposit rate and interest shall be fixed by resolution of the city council and reviewed and amended as deemed necessary.

B. Property Owners May Pledge Property.

1. Any person, firm or corporation residing within the corporate limits of the City of Newberg so applying to the city for use of its municipal wastewater system, which person, firm or corporation shall be the owner of the legal title to the real property situated within the corporate limits of the city and where the wastewater service is to be furnished may, at the time of making such application for wastewater service, consent in writing that any and all unpaid delinquent rentals or other charges which may be incurred on account of wastewater service

furnished to the applicant or to the premises shall constitute a valid lien against the property in favor of the city and, at the option of the city, may be enforced and collected in the same manner as any other municipal lien.

2. All such applications by the owners of property, wherein the real property is pledged to secure the payment of the delinquent rentals and charges, shall be signed by the owner or owners personally, or such other person as would be authorized to execute and deliver a good and sufficient deed of conveyance to the premises under the laws of the State of Oregon.

C. Mandatory or Permissive Fees for Use of POTW.

1. For the purposes of recovering costs from users of the city's POTW for the implementation of programs established by this chapter, the city shall adopt by resolution charges or fees which shall be set forth in the city's schedule of charges and fees. These charges and fees shall be reviewed and amended as deemed necessary and shall include:

- a. Fees to fully recover the cost of operating and maintaining the POTW and its associated functions;
- b. Fees to provide appropriate development and/or depreciation funds for the replacement of major components of the POTW;
- c. Fees for reimbursement of costs of setting up and operating the city's pretreatment program, including industrial discharge permits; and may also include:
 - i. Fees for monitoring, inspection and surveillance procedures;
 - ii. Fees for reviewing accidental discharge procedures and construction;
 - iii. Fees for new service connections;
 - iv. Fees for filing appeals;
 - v. Fees for special treatment costs associated with extra-strength industrial wastewaters;
 - vi. Other fees as the city may deem necessary to carry out the requirements contained in this chapter.

2. These fees relate solely to the matters covered by this chapter and are separate from all other fees chargeable by the city.

D. Administrative Penalties as Part of Enforcement Actions.

1. When the environmental services supervisor finds that a user has violated, or continues to violate, any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the environmental services supervisor may fine such user in an amount not to exceed \$6,250. Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

2. Users desiring to dispute such fines must file a written request for the environmental services supervisor to reconsider the fine along with full payment of the fine amount within 30 days of being notified of the fine. Where a request has merit, the environmental services supervisor may convene a hearing on the matter. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The environmental services supervisor may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

3. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.62.]

Cross-reference: See ORS 223.387 for good and sufficient ownership of record in local improvement liens.

13.10.260 Customers outside city.

A. No new connection to the municipal wastewater system of the city shall be extended outside the corporate city limits, within or without the urban growth boundary, except to an existing dwelling. The new connection shall be used only to supply wastewater use to an existing structure and will not be used to allow any new development.

B. Connection of the city wastewater system to dwellings outside the city limits shall be extended only in cases where the city has determined the existing service (i.e., septic tank or cesspool) to the dwelling cannot be repaired and shall be discontinued.

1. Owner Responsible. The person who owns the premises served by the wastewater system shall be responsible for payment of wastewater user charge for that property, notwithstanding the fact that the property may be occupied by a tenant or other occupant who may be required by the owner to pay the charges.

2. Billing – Payment of User Charges. Users outside the city shall be billed monthly in accordance with the rate schedule approved by the city council.

C. User Charges – Delinquency. Wastewater user charges levied in accordance with this chapter shall be a debt due to the city and a lien upon the property. If this debt is not paid within 30 days after it shall be due and payable, it shall be deemed delinquent and may be recovered by civil action in the name of the city against the property owner, the person or both.

D. Discontinuance of Service. In the event of failure to pay wastewater charges after they have become delinquent, the city shall have the right to remove or close wastewater system connections and enter upon the property for accomplishing such purposes. The expense of such discontinuance, removal, or closing, as well as the expense of restoring service, shall be a debt due to the city and lien upon the property and may be recovered by civil action in the name of the city against the property owner, the person or both.

E. Restoration of Service. Wastewater service shall not be restored until all charges, and the expense of removal, closing, and restoration, have been paid. Change of ownership or occupancy of premises found delinquent shall not be cause for reducing or eliminating these penalties. [Ord. 2733 Att. A, 2-7-11; Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.63.]

13.10.270 Handling of funds.

A. Billing Address. Bills for wastewater charges shall be mailed to the address specified in the application for permit to make the connection unless or until a different owner or user of the property is reported to the finance department.

B. Collection by City. All collections of wastewater user charges shall be made by the finance director.

Wastewater user charges shall be computed as provided in NMC 13.10.240 and shall be payable as provided in this section.

C. Wastewater Fund – Use.

1. The finance director is directed to deposit in the wastewater fund all of the gross revenues received from charges, rates and penalties collected for the use of the wastewater system as herein provided.

2. The revenues thus deposited in the wastewater fund shall be used exclusively for the operation, maintenance, and repair of the wastewater system, reasonable administration costs, expenses of collection of charges imposed by this chapter and payments of the principal and interest on any debts of the wastewater system of the city. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.64.]

Article VI. Enforcement

13.10.280 Harmful discharges.

A. Termination or Limitation of Services. The city may, notwithstanding the provisions in NMC 13.10.080 et seq., terminate or limit the wastewater treatment service, a wastewater discharge permit, and/or municipal water service when such termination or limitation is necessary, in the opinion of the director, to stop an actual or threatened discharge which: presents or may present an imminent or substantial threat to the health and/or welfare of persons or

the environment; causes interference or damage to the POTW; or causes the city to violate any condition of its NPDES permit.

B. Notice of Termination or Limitation. Written notice of the termination or limitation shall be given in accordance with NMC 13.10.290(C), and shall specify the date when the termination or limitation is to be effective.

C. Response to Order. Any person notified of a termination or limitation of the wastewater treatment service or the wastewater discharge permit shall immediately stop or limit the contribution. In the event of a failure of the person to comply voluntarily with the termination or limitation order, the director shall take such steps as deemed necessary, including immediate severance of the wastewater system connection and/or termination of municipal water service, to prevent or minimize damage to the POTW or endangerment to any individual. The director shall reinstate the wastewater discharge permit, the wastewater treatment service, and/or municipal water service, upon proof of the elimination of the noncomplying discharge. Such proof shall include a detailed written report submitted by the user in accordance with this chapter. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.75.]

Penalty: See NMC 13.10.360.

13.10.290 Violations, notifications and show-cause hearings.

A. Violation Defined.

1. Notwithstanding the provisions of NMC 13.10.080 et seq., a violation shall have occurred when any requirement of this chapter has not been met; or when a written request of the director, made under the authority of this chapter, is not met within the specified time; or when a condition of a permit or contract issued under the authority of this chapter is not met within the specified time; or when permitted effluent limitations are exceeded, regardless of intent or accident; or when false information has been provided by the discharger.

2. A significant industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

a. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits;

b. Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a six-month period equals or exceeds the product of the numeric pretreatment standard or requirement including instantaneous limits multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

c. Any other violation of a pretreatment standard or requirement (daily maximum, long-term average, instantaneous limit, or narrative standard) that the director determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

d. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the director's exercise of its emergency authority to halt or prevent such a discharge;

e. Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

f. Failure to provide, within 45 days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

g. Failure to accurately report noncompliance; or

h. Any other violation or group of violations, which may include a violation of best management practices, which the city determines will adversely affect the operation or implementation of the local pretreatment program.

3. Industrial users other than SIUs are in significant noncompliance only if they violate the criteria in subsections (A)(2)(c), (A)(2)(d) and (A)(2)(h) of this section.

B. Continuing Violations. Each day of continuing violation shall be considered as a separate violation.

C. Notice of Violation. Upon determination by the director that a violation has occurred or is occurring, the director may issue a written notice of violation to the user, which outlines the violation and the potential liability. The notice may further request correction of the violation within a specified time and/or require written confirmation of the correction or a plan of action identifying the efforts being made or to be made to correct the violation by a specified date. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation. The notice shall be either personally delivered to the discharger's premises or be sent certified mail, return receipt requested, to the discharger's premises. If the user is a corporation, notification may be to the appropriate agent or officer. Emphasis shall be placed on resolving such violations through mutual cooperation, assistance and communication.

D. Consent Orders. The director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to subsections (E) and (F) of this section and shall be judicially enforceable. Use of a consent order shall not be a bar against, or prerequisite for, taking any other action against the user.

E. Compliance Orders. When the director finds that a user has violated or continues to violate any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the director may issue an order to the user responsible for the discharge directing that the user come into compliance within a time specified in the order. If the user does not comply within the time specified in the order, wastewater service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the wastewater system. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

F. Cease and Desist Orders. When the director finds that a user has violated (or continues to violate) any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

1. Immediately comply with all requirements; and
2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

G. Show Cause Hearing.

1. The director may order the user to show cause why the proposed enforcement action should not be taken. A written notice shall be served on the user specifying the time and place of a hearing to be held by the director regarding the violation, the reasons why the action is to be taken, the proposed enforcement action, and directing the user to show cause why the proposed enforcement action should not be taken. Notification shall be made at least 10 days before the hearing, and in accordance with subsection (C) of this section. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

2. At any hearing held pursuant to this chapter, testimony taken shall be recorded. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the costs of the transcript.

3. The director shall forward a finding of fact and a resulting recommendation to the city manager. After the city manager has reviewed the evidence on the record, the manager may issue an order to the user responsible for the discharge directing that (following a specified time period) the wastewater services be discontinued unless:

- a. Adequate pretreatment facilities, devices or other related appurtenances shall have been installed; and/or
- b. Existing pretreatment facilities, devices or other related appurtenances are properly operated and maintained. Further orders and directives as are necessary and appropriate may be issued.

4. In situations that the director determines to be emergencies (as defined in NMC 13.10.300(B)(3)), the director may order the discontinuance of wastewater service in accordance with NMC 13.10.300. City manager action is not required under such emergency conditions.

H. Court Action. The city council may initiate appropriate civil action through the city attorney in a court of competent jurisdiction to enjoin a violation and obtain corrective measures and any other appropriate relief if action under subsections (C) and (D) of this section has not satisfactorily resolved the violation.

I. Injunctive Relief. Whenever an industrial user has violated or continues to violate the provisions of this chapter, permit or order issued hereunder, the director, through counsel, may petition the court for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains or compels the activities on the part of the industrial user. The director shall have such remedies to collect these fees as it has to collect other wastewater service charges. The city may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

J. Civil Penalties.

1. A user which has violated or continues to violate any provision of this chapter, a pretreatment condition, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a civil penalty in at least the amount of \$1,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

2. The director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.

3. In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

4. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

K. Criminal Prosecution.

1. A user which has willfully or negligently violated any provision of this chapter dealing with a pretreatment condition, a wastewater discharge permit, order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, as set out in subsection (K)(4) of this section.

2. A user which has willfully or negligently introduced any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor as set out in subsection (K)(4) of

this section. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.

3. A user which knowingly made any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this chapter, wastewater discharge permit, or order issued hereunder, or who falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this chapter shall, upon conviction, be guilty of a misdemeanor set out in subsection (K)(4) of this section.

4. Penalty. Criminal conviction of any violations shall be a Class A misdemeanor subject to a maximum fine of \$6,250 per violation per day or imprisonment of not more than one year or both. This penalty shall be in addition to any other cause of action or civil penalty available under this chapter or state law.

L. Remedies Nonexclusive. The provisions in NMC 13.10.280 and this section are not exclusive remedies. The city reserves the right to take any, all, or any combination of these actions against a noncompliant user. Enforcement in response to pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the city reserves the right to take other action against any user when the circumstances warrant. Further, the city is empowered to take more than one enforcement action against any noncompliant user. These actions may be taken concurrently.

M. Affirmative Defense.

1. Any industrial user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions covered in 40 CFR 403.5(a)(1), (b)(3), (4), (5), (6), and (8) in addition to those covered in this chapter. The industrial user, in its demonstration, shall be limited to provisions of 40 CFR 403.5(a)(1), (2), (i) and (ii).

a. Upset Condition. For the purposes of this section, “**upset**” means an exceptional incident in which there is unintentional and temporary noncompliance with applicable pretreatment standards because of factors beyond the reasonable control of the user. An “**upset**” does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. An upset shall constitute an affirmative defense to an action brought for noncompliance with applicable pretreatment standards if the requirements of subsection (M)(1)(c) of this section are met.

c. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

i. An upset occurred and the user can identify the cause(s) of the upset;

ii. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures; and

iii. The user has submitted the following information to the POTW and treatment plant operator within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):

(A) A description of the indirect discharge and cause of noncompliance;

(B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

(C) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

d. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

- e. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with applicable pretreatment standards.
- f. Users shall control production of all discharges to the extent necessary to maintain compliance with applicable pretreatment standards upon reduction, loss, or failure of their treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

2. Prohibited Discharge Standards. A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the prohibitions in NMC 13.10.080(A) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

3. Bypass.

a. For the purposes of this section:

- i. **"Bypass"** means the intentional diversion of wastestreams from any portion of a user's treatment facility.
- ii. **"Severe property damage"** means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. **"Severe property damage"** does not mean economic loss caused by delays in production.

b. A user may allow any bypass to occur which does not cause applicable pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subsections (M)(3)(c) and (d) of this section.

c. Notice of Bypass.

- i. If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW at least 10 days before the date of the bypass, if possible.
- ii. A user shall submit oral notice to the city of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The POTW may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

d. Bypass Conditions.

- i. Bypass is prohibited, and the POTW may take an enforcement action against a user for a bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of

reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The user submitted notices as required under subsection (M)(3)(c) of this section.

ii. The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three conditions listed in subsection (M)(3)(d)(i) of this section.

N. Vandalism. No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the municipal wastewater system. Any person found in violation of this requirement shall be subject to the sanctions set out in NMC 13.10.350. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.76.]

Penalty: See NMC 13.10.360.

13.10.300 Revocation of permit and/or termination/suspension of service.

A. Termination or Suspension of Discharge. The director may terminate a discharge into the POTW, revoke a permit, or suspend the discharge for a specified length of time if:

1. The discharge presents or may present an imminent and substantial danger to the health or welfare of persons or the environment, or causes interference with the operation of, or damage to, the POTW; or
2. The permit to discharge into the POTW was obtained by misrepresentation of any material fact or by lack of full disclosure; or
3. Directed by the city council or a court of competent jurisdiction in accordance with NMC 13.10.290.

B. Notice of Revocation or Suspension. Notice in accordance with NMC 13.10.290(C) shall be provided to the user prior to revoking, terminating, or suspending the discharge; and/or terminating, revoking, or suspending the user's municipal water service.

1. In situations that are not emergencies, the notice shall be in writing; shall contain the reasons for the revocation, termination or suspension; the effective date, and the name, address and telephone number of a city contact; and shall be signed by the director, prior to the date specified for revocation, termination or suspension.
2. In situations that are determined to be emergencies by the director, the initial notice may be verbal or written and shall contain the information required in subsection (B)(1) of this section. If verbal notice is given, it shall be followed within two working days by a written notice. The effective date of the termination or suspension in emergency situations may be immediately after verbal or written notice has been given as required in this subsection.
3. For the purposes of this section, an “**emergency situation**” is defined as a situation in which action must be taken as rapidly as possible in order to prevent or reduce an imminent and substantial danger to the health or welfare of persons, property, or the POTW.

C. User Termination of Discharge. Any user whose permit has been revoked, or whose service has been terminated or suspended, shall immediately stop all discharge of wastewater into the POTW. The director may, without any liability for prosecution or damages, disconnect or permanently block from the POTW the connection of any user whose permit has been revoked, or whose service has been terminated or suspended, if such action is necessary to ensure compliance with the order of revocation, termination or suspension. Similar action to suspend the user's municipal water service may be taken if deemed necessary by the director.

D. Filing of Appeal. Except in emergency situations as defined in subsection (B)(3) of this section, the filing of an appeal pursuant to NMC 13.10.320 shall stay enforcement of the action by the director under this section pending final administrative action on the appeal. This provision supplements and does not restrict other provisions of this chapter, laws or regulations authorizing termination of service for delinquency in payment of fees or charges.

E. Limited Termination or Suspension. Decisions by the director to terminate or suspend a discharge shall be made after due consideration of all known facts. The termination or suspension may be directed to only specific, noncomplying flows within a facility. This section does not universally require the termination of all user operations, particularly if some operations are not wastewater contributions. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.77.]

13.10.310 Public notification.

A list of all industrial users in significant noncompliance during the 12 previous months shall be annually published by the city in the largest daily newspaper published in the municipality in which the POTW is located summarizing the violations and enforcement action undertaken by the city.

For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the criteria as defined in NMC 13.10.290. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.78.]

13.10.320 Appeals.

A. Filing and Response Time. Any person aggrieved by any decision or action of the director under this chapter may file a written request with the city manager for reconsideration within 10 days of notification of the decision or action. The notice of appeal shall be on a form provided by the director and shall set forth in reasonable detail the decision or action appealed from and the facts and arguments supporting the appellant's request for reconsideration. The city manager shall render a final determination within 10 days of the receipt of the request for reconsideration. The city manager may establish such procedures as may be deemed necessary or proper to conduct the reconsideration process. The filing of a request for reconsideration shall be a condition precedent to the right to appeal to the city council pursuant to subsection (B) of this section. The filing of an appeal shall not stay enforcement of the action by the director in emergency situations as defined in NMC 13.10.300(B)(3).

B. Appeal of Final Determination.

1. Any person aggrieved by the final determination of the city manager may appeal the determination to the city council within 10 days of notification by the city manager of final determination. Written notification of the appeal shall be filed with the city council and city manager (together with the payment of a fee of \$50.00) within 10 days after receipt of the final determination of the city manager and shall set forth in reasonable detail the decision or action appealed from and the facts and arguments supporting the appellant's request for reversal or modification of the city manager's determination.

2. The city council shall conduct a hearing on the appeal according to procedures established by the city council. The hearing shall be conducted at the earliest possible regularly scheduled city council meeting, with final city council action being taken on the appeal within 60 days after its initial filing. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.79.]

13.10.330 Falsifying information.

A. Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or wastewater discharge permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter shall be in violation of this chapter and, upon conviction, be punished as established by this chapter.

B. In addition, the industrial user shall be subject to:

1. The provisions of 18 USC relating to fraud and false statements;
2. The provisions of Section 309(c)(4) of the Clean Water Act, as amended, governing false statements, representation or certification; and
3. The provision of Section 309(c)(5) regarding responsible corporate officers. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2150, 8-28-84. Code 2001 § 51.80.]

Penalty: See NMC 13.10.360.

13.10.340 Supplemental enforcement action.

A. Performance Bonds. The director may decline to issue or reissue a wastewater discharge permit to any user which has failed to comply with any provision of this chapter, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement unless such user first files a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance.

B. Liability Insurance. The director may decline to issue or reissue a wastewater discharge permit to any user which has failed to comply with any provision of this chapter, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

C. Water Supply Severance. Whenever a user has violated or continues to violate any provision of this chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

D. Public Nuisance. A violation of any provision of this chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement is declared a public nuisance and shall be corrected or abated as directed by the director. Any person(s) creating a public nuisance shall be subject to the provisions of the Newberg Municipal Code governing such nuisances, including reimbursing the city for any costs incurred in removing, abating, or remedying said nuisance.

E. Severability. If any provision of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

F. Conflicts. All other chapters and parts of other chapters inconsistent or conflicting with any part of this chapter are repealed to the extent of the inconsistency or conflict. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07. Code 2001 § 51.81.]

13.10.350 Cost recovery.

A. The director shall recover all reasonable costs incurred by the city as a result of a violation of this chapter. The costs include, but are not necessarily limited to:

1. Work necessary to prevent and/or repair damage to the POTW;
2. Additional treatment and similar extraordinary measures;
3. Any penalties levied against the city for violation of state and/or federal permits resulting from the discharge.

B. Notification of the costs to be recovered under subsection (A) of this section shall be in accordance with NMC 13.10.290(C). The notification shall state the specific violation(s), the damages and penalties sustained by the city, the costs of those damages and penalties, and the costs the director has determined as attributable to the discharge and billed to the discharger.

C. The costs are due and payable by the discharger upon receipt of the letter.

D. The director may (with the concurrence of the city manager) terminate or suspend water service and/or discharge service for nonpayment of costs that the user has been ordered to pay by the city.

E. The city council may, through the city attorney, place a lien against the discharger's property for nonpayment of costs that the user has been ordered to pay by the city. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2150, 8-28-84. Code 2001 § 51.82.]

13.10.360 Penalty.

A. Penalties for Violations. Notwithstanding the provisions of NMC 13.10.080 through 13.10.120, no unauthorized person shall maliciously, willfully or negligently break, damage, destroy or uncover any structure, appurtenance or equipment which is part of the POTW. Any person violating this provision shall have committed a city Class 1 civil infraction and shall be processed in accordance with the procedure set forth in the uniform civil infraction procedure ordinance, Article IV of Chapter 2.30 NMC. Each day of continuing violation shall constitute a separate offense.

B. Continuing Violations. Any user who is found to have violated an order of the city council or who failed to comply with any provisions of this chapter, and the orders, rules, regulations, and permits issued hereunder shall have committed a city Class 1 civil infraction and shall be processed in accordance with the procedure set forth in the uniform civil infraction procedure ordinance, Article IV of Chapter 2.30 NMC. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the city may recover reasonable attorneys' fees, court costs, court reporter's fees and other expenses of litigation by appropriate court action against the person found to have violated this chapter or the orders, rules, regulations, and permits issued hereunder. [Ord. 2713 Exh. B, 4-20-09; Ord. 2684 § 1, 12-17-07; Ord. 2319, 1-21-92; Ord. 2163, 4-1-85; Ord. 2150, 8-28-84. Code 2001 § 51.83.]

Chapter 13.15

WATER

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- 13.15.290 Penalty.

Cross-references: Citizens' rate review committee, see NMC 2.15.120 et seq.; system development charges, see Chapter 13.05 NMC, Article I.

Article I. General Provisions

13.15.005 Purpose and policy.

This chapter sets forth uniform requirements for users of the publicly owned treatment, storage, pumping and distribution of water for the City of Newberg and enables the city to comply with all applicable state and federal laws. The objectives of this chapter are:

(1) Plan and construct a City water system that protects the public health, provides cost-effective water service, meets the demands of users and addresses regulatory requirements;

(2) Require developers to aid in improving the water system by constructing facilities to serve new development and extend lines to adjacent properties;

(3) Water lines should be looped whenever possible to prevent dead-ends, to maintain high water quality and to increase reliability in the system;

(4) Improve the water system to provide adequate service during peak demand periods and to provide adequate fire flows during all demand periods; and

(5) The most current Water System Master Plan is incorporated by reference as a supporting technical document.

This chapter shall apply to all users of the water system. This chapter authorizes the issuance of water connection permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

13.15.010 Application for water service.

Every person, firm, corporation or association desiring the use of water from the municipal water system of the city shall apply, providing the following information:

A. Name and address of applicant.

B. Whether applicant resides within or without the corporate limits of the city.

C. Whether applicant is the owner or tenant of property where water is to be used, and if a tenant, the name and address of the owner of the property (or) the owner's authorized agent.

D. Such other information as may be required by this chapter or by the city finance department. [Code 2001 § 52.01.]

13.15.020 Property owners may pledge property.

A. Any person, firm or corporation residing within the corporate limits of the city so applying to the city for the use of water from its municipal water system, which person, firm or corporation shall be the owner of the legal title to the real property situated within the corporate limits of the city and where the water service is to be furnished may, at the time of making the application for water service, consent in writing that any and all unpaid delinquent rentals or other charges which may be incurred on account of water service furnished to the applicant or to the premises shall bear interest at the rate of six percent per annum from date of delinquency; and the principal and interest shall become a lien against the real property until paid in full, which real property shall be particularly described in the application, and authorize and empower the city to enforce the payment of the lien in the same manner as other municipal liens of the city are enforced and collected.

B. All such applications by the owners of property, wherein the real property is pledged to secure the payment of the delinquent rentals and charges, shall be signed by the owner or owners personally, or such other person as would be authorized to execute and deliver a good and sufficient deed of conveyance to the premises under the laws of the State of Oregon. [Ord. 1040, 10-15-48. Code 2001 § 52.02.]

Cross-reference: See ORS 223.387 for municipal liens pertaining to waterworks.

13.15.030 Water connections.

A. The city council shall, as it deems necessary, establish and adopt by resolution rules and regulations regarding connection to the city water system, permits affecting the connection, and fees, rates and charges relating to connection and the general provision of water service.

B. Every applicant for water service from the city which shall require a new tap or connection with a water main or pipeline of the city water system shall, before the connection is made, pay the appropriate water connection fee as established by the city council; subject, however, to such contracts as the city council may authorize in connection with any subdivisions, annexations, industrial establishments and similar developments.

C. City and Contractor Action – Applicant to Pay Cost of Connection.

1. Where the water connection is proposed to be used, the city shall excavate and tap the main or city pipeline, furnish and install the corporation cock, all necessary pipe and fittings to the meter, including the city shutoff, meter and meter box, charging the applicant, in addition to the water systems development charge, the city's actual labor, materials, equipment and administrative overhead.
2. An approved contractor may make the connection to and following standard specifications to the city main or pipeline using approved materials, installation practices and following standard specifications under the supervision of city personnel. In addition to the water systems development charge, the applicant shall be charged for the city's actual cost of labor, materials supplied and administrative overhead, if an approved contractor installs the water service connection.
3. The applicant shall pay the estimated cost of the water connection at the time application is made for a building permit. Any additional cost over the estimate shall be paid upon completion of the connection and any excess shall be promptly refunded to the applicant.

D. Shutoff and Meter Placement.

1. Where there is a curb in the street at the point where water service is to be furnished, the city's shutoff shall be located just inside the curb line, and the meter shall be placed just inside the city shutoff except where the city main is located inside the curb line, in which event the meter shall be placed just outside of the sidewalk, if any, and the city's shutoff outside of the meter; provided, however, that if there is no sidewalk, the meter shall be placed not less than six feet outside of the property line and the city's shutoff outside of the meter.
2. In the event that there is no curb but there is a concrete sidewalk, the meter shall be placed just outside the sidewalk and the city's shutoff outside of the meter. In the event that there is no concrete sidewalk or curb, the meter shall be placed not less than six feet outside of the property line and the city's shutoff just outside of the meter. In all cases, the private shutoff shall be placed adjacent to and immediately inside of the meter, and all fittings hereafter installed from the main to and including the meter and meter box shall be and remain the property of the city. The city shall service and maintain the water line from the main up to and including the meter and meter box.

E. In the event that any meters not owned by the City of Newberg or any privately owned lines or fittings are not so maintained, the director of public works or designee shall immediately proceed to turn off the water supply through same, and shall not again turn on the water until satisfactory repairs or replacements have been made.

F. In the event that an applicant shall desire to tap a private line or main, the applicant shall file with the city the written permission of the owners or managers of the line, allowing the applicant to so tap the private line and specifying the size of tap. Thereupon, the applicant shall do all necessary excavation work, and the city shall tap the private line and install the corporation cock, charging for the work in accordance with a schedule of charges to be approved by the city council. All meters, meter boxes, shutoffs and cocks shall be of a type, make and quality satisfactory to the director of public works or designee, and shall be subject to inspection by the director of public works or designee at all times. In the event of the failure of the applicant or owner of the premises served, or the user of water on the premises, to maintain any part of the line furnished or installed by the applicant or owner of the premises served, or the user of water on the premises or owned by the applicant or owner of the premises served, or the user of water on the premises in a condition satisfactory to the director of public works or designee, the water shall be turned off by the director of public works or designee at such point as the director of public works or designee shall see fit, and shall be turned on again only after the condition of the line has been remedied in a manner satisfactory to the superintendent; and no person, firm or corporation shall, in any manner, open, turn on, touch or interfere with any shutoff cock or gate which may have been closed by the superintendent.

G. All private lines or mains outside the city and serving two or more customers shall have a gate or shutoff installed at the point where the private line or main leaves the city's main, which the gate or shutoff shall be the property of and installed and maintained by the City of Newberg.

H. The amount of the charge payable to the city for turning on water, where the pipeline and fittings have already been installed, shall be set by resolution adopted by the city council. The turn-on charges shall be paid to the city at the time of payment of the first bill for water service charged after the turn-on and shall constitute a part of the bill.

I. No wells shall be used inside the city, except those approved for nondomestic use only. All wells must meet city standards, be inspected, and may have no cross-connections.

J. Annexation – Water District – Payment.

1. Upon annexation to the city and if a city water main is within 100 feet of the property line, the property shall connect to the city main at the city's discretion and within 180 days of formal notice from the city manager.

2. If the property is served by a water district, the property shall disconnect from the water district line if the above conditions stated in subsection (J)(1) of this section apply.

3. Properties already served by the city through a water district or group customer line shall not pay water systems development charges at the time of connecting to the city's main. Those currently not served by a water district or group line shall pay water systems development charges at the time of connection.

4. All other rules and regulations that apply to other city water users shall apply.

5. These properties may pay for the connection using existing financial mechanisms, including those available through the city and available under state law. [Ord. 2548, 5-21-01; Ord. 2135, 11-7-83; Ord. 1983, 11-5-79; Ord. 1347, 2-18-63; Ord. 1040, 10-15-48. Code 2001 § 52.03.]

Penalty: See NMC 13.15.290.

Cross-reference: See Chapter 223 of Title 21 ORS pertaining to local improvements and works generally.

13.15.040 Water service generally.

A. All water served to customers outside the city limits shall be measured by water meters located as near as practicable to the city limits or to a main owned by the city outside the city limits; provided, however, that single residential users may be served directly at the option of the city.

B. All water mains or service lines outside the city and not owned by the city and serving two or more users of water are hereinafter referred to as “**group customer lines**” and all users of water through the group customer lines are hereinafter referred to as “**group customers**.” Water service to each group customer line shall be metered through a single master meter of a size and type satisfactory to the director of public works or designee and the City of Newberg and located as hereinabove set forth and each master meter shall be purchased and installed at the expense of the group customers served by the group customer line. The location and manner of installation of each master meter shall be satisfactory to the director of public works or designee.

C. The collection of water charges for all group customers served by a single master meter shall be made through a single individual or agency, satisfactory to the City of Newberg, which individual or agency shall assume the responsibility and risk of collecting the necessary revenues from the individual users of water served through the master meter and paying to the city for all water passing through the master meter.

D. The group customers served by each existing group customer line shall have notified the city in writing not later than July 7, 1958, of the name and address of the individual or agency and the group customers shall thereupon be required to make a further selection satisfactory to the city. All water service outside the city is at all times liable to restriction, rationing or discontinuance in the event of shortage of water within the city. Pressure and quality of all water furnished for use outside the city are at the risk of the outside users and without guarantee by the city.

E. The city reserves the right to act on each application for water service outside the city upon its merits, without regard to any other past or present applicant or service. All group customer lines and individual lines and services outside the city must be satisfactory in all respects to the director of public works or designee and must be operated in accordance with all rules and regulations of the city, now or hereafter adopted, applicable thereto.

F. No interconnection between the city water supply and other water sources will be permitted. All individuals and group customers receiving water service outside the city, from the City of Newberg, will be required to cooperate to a reasonable and practicable extent with other water customers of the city, in the extension or enlargement of common facilities.

G. The city will deem it sufficient cause and reserves the right to discontinue service to any individual or group customer using water outside the city for the following reasons:

1. Failure to pay all bills when due or to report number of customers served.
2. Reselling water outside the group.
3. Failure or refusal to cooperate with the city or other customers.
4. Permitting interconnection in any way with wells or other sources of water.
5. Failure to obey or abide by any of the rules or regulations of the city.
6. Failure to select and notify the city of an individual or agency satisfactory to the city to make the collections and payment hereinabove referred to for a group customer line. [Ord. 1208, 5-5-58. Code 2001 § 52.04.]

Penalty: See NMC 13.15.290.

13.15.045 Water Connection Procedures

A. Permit Required. All new construction shall be connected to the city water system. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public water system or appurtenance without first obtaining a written permit from the director. The permit shall specify the location where the connection (or other approved work) shall be made, the manner of making the connection, the name and address of the owner, and the name of the water system installer who will be doing the work. No permit shall be issued unless the water system to which connection is requested has been accepted as a part of the public water system. No permit shall be issued without payment of all appropriate permit, connection, development and inspection fees, including any delinquent assessments against the owner of the property.

B. As set forth in the Water Distribution System Plan, the City has four water service levels. All development applicants shall be required to connect the proposed development site to the service level in which the development site is located. If the development site is located on a boundary line between two service levels the applicant shall be required to connect to the service level with the higher reservoir elevation. The applicant may also be required to install or provide pressure reducing valves to supply appropriate water pressure to the properties in the proposed development site.

C. Design/Construction Standards. Plans for all public water systems shall be reviewed and approved by the director prior to construction. The plans shall conform to the requirements of the Public Works Design and Construction Standards. All public water system improvements shall be designed by a registered professional engineer.

13.15.050 Water meter required.

A. No water shall be furnished to any person, firm or corporation by the municipal water system of the city, except that the water shall be metered through a meter which, together with the installation of the meter, has been approved by the director of public works or designee of the city; provided, however, that water furnished through standby fire protection service connections, as hereinafter described, shall not be metered unless required by the director of public works or designee.

B. No connection or extension of the water system of the city shall be made to other buildings or structures except upon permission of the director of public works or designee, and then only upon payment of a separate minimum rate for each additional building or structure located upon the premises, housing a separate family or families or tenants therein, and coming under the appropriate rate classification hereinafter provided. [Ord. 1337, 11-5-62; Ord. 1040, 10-15-48. Code 2001 § 52.05.]

Penalty: See NMC 13.15.290.

13.15.060 Water rates.

There are levied and imposed upon all users of the water system, both inside and outside the city, just and equitable charges for service, maintenance, operation, debt service, and reconstruction of the water system. The setting of rates may be undertaken in conjunction with the consideration of the wastewater rates. The just and equitable charges shall be fixed by an administrative process as set forth in NMC 2.15.120 et seq. [Ord. 2418, 10-2-95. Code 2001 § 52.06.]

13.15.070 Installation of meters.

Two or more commercial water users situated in the same building may be placed on individual meters or a single meter may be used for the entire building, as desired by the applicant. All installation of meters and city service pipelines hereunder shall be under the supervision of the appropriate official of the city, and shall in any event be done in compliance with all of the ordinances, rules and regulations of the city applicable to the installation. [Ord. 1040, 10-15-48. Code 2001 § 52.07.]

13.15.080 Discontinuance of water service.

The city expressly reserves the right to discontinue furnishing water to any and all water users and consumers outside the corporate limits of the city in the event of water shortage or other public emergency or catastrophe. [Ord. 1040, 10-15-48. Code 2001 § 52.08.]

13.15.090 Collection of water bills.

A. All water rates and charges shall be payable to the city. If any water consumer fails to pay the water bill on or before the due date stated on the bill, the bill shall be deemed delinquent. If the delinquent bill is not paid on or before the due date as stated on the bill, the water shall be turned off from the premises and remain off until the water bill has been paid, including any turn-on charges which are set by city council resolution. Nothing contained in this chapter shall be construed to limit or restrict the right of the city to turn off the water from any premises on account of unpaid water rentals and to keep the same turned off until the delinquent rentals and other incurred charges have been paid in full.

B. Removal or Discontinuance – Notification, Transfer of Unpaid Balance.

1. Any water user subject to the provisions of this chapter who intends to move from the premises at which water or water service is being furnished, or who shall for any reason desire such service discontinued, shall notify the city, specifying the date of such removal or discontinuance. In the event that such notice is not given as herein provided, such water user shall be charged with all water furnished to the premises until the notice is given.

2. If a water customer, residential or other class, discontinues service at one location and fails to pay the final bill, and the customer moves to a new location with city water service, or returns to the city as a new customer, the unpaid balance from the discontinued service shall be transferred to the new account or to their existing residential account. [Ord. 2135, 11-7-83; Ord. 1347, 2-18-63; Ord. 1040, 10-15-48. Code 2001 § 52.09.]

13.15.100 Unlawful acts.

A. Unlawful Turn-Ons. It shall be unlawful for any person, firm or corporation, as owner, tenant or otherwise, to cause the water to be turned on to supply any premises whatsoever if the same shall have been turned off by the city.

B. Unlawful Connections. It shall be unlawful for any person, either as owner, tenant or otherwise, to make any taps or connections to the municipal water system of the city without first having made application as in this chapter provided.

C. Unlawful Extensions. It shall be unlawful for any person, firm or corporation, either as owner, tenant or otherwise, to make any extensions to any other premises from a water system by means of pipe, hose or otherwise, so as to extend and supply the use of water to any premises other than where applied for and authorized by the city.

D. Injury to Water Line or Water Meter. It shall be unlawful for any person in any way to damage, injure or obstruct any water line or any part of the municipal water system, including the water meter, of the city. Any person causing such injury shall pay for the costs of all repairs to the damaged part.

E. Pollution. It shall be unlawful for any person to trespass upon, remove any timber from, construct any road or highway upon or across, blast any rock or other materials upon, pasture any horse, cow, sheep or other animal or animals upon, deposit any putrid, deleterious or offensive substance upon, or hunt upon or deposit any dead animal or bird upon any spring or watercourse from which or by means of which water is furnished to the municipal water system of the city. [Ord. 1040, 10-15-48. Code 2001 § 52.10.]

Penalty: See NMC 13.15.290.

13.15.110 Additional users outside city.

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

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

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

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

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

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

13.15.120 Exceptions due to hardships.

An exception to NMC 13.15.110 may be granted by the city council in cases of hardship. The following process shall be used in determining whether the exception shall be granted, and the criteria shall be strictly applied with the burden of proof upon the applicant:

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

1. The new or additional water connection can be used only to supply water to an existing structure and will not be used to allow any new development.
2. Annexation of the property upon which the structure is located is not immediately practical.

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

1. A genuine hardship exists due to quality and/or quantity of water for domestic consumption.
2. All other alternatives have been investigated and are not economically feasible.
3. The dwelling to be served is in close proximity of existing services, either private or public, and the granting of the additional connection would not overburden existing lines, either private or public, or overburden the city's water supply.

C. Application for Hardship. A request in letter form for a hardship exception to NMC 13.15.110 shall be made to the city council. The request shall be accompanied by a statement and evidence to be used in the determination. The request shall be reviewed and a recommendation made to the city council by the public works department prior to the city council's consideration of the matter. A granting of the request for an exception can be made by the city council; provided, that all the conditions stated in subsection (B) of this section do exist.

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

1. The owner of the property shall agree to pay the full cost of extending services to the parcel with all services meeting city standards and including all water connection fees and water system development charges.
2. The owner of the subject property agrees to annex to the city at such time as annexation is legally possible and is requested by the city. At the time of annexation, the property owner shall pay all system development charges then in effect, except wastewater, which shall be assessed in accordance with Chapter 13.10 NMC.
3. Water shall be for domestic purposes only and no water granted under this exception shall be permitted for agricultural use.
4. A written agreement as to the conditions under which the exception was granted shall be recorded on the Yamhill County deed records with the applicant paying all fees.
5. The city council may waive all or any portion of the city system development charges as it feels is in the best interest of the city. [Ord. 2666, 3-6-07; Ord. 1912, 7-3-78. Code 2001 § 52.12.]

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

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

13.15.140 Water connections outside city.

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

1. They were in existence as of January 1, 1988, or the property owner had requested a water connection to the property for the purposes of a residence before January 1, 1988, and desires the water connection for the purposes of establishing a residence; and
2. They will be served through a water district; and
3. A new agreement between the water district and the city will be established; and
4. The properties upon which the residences are located agree to annex to the city at the appropriate time and at the request of the city; and
5. The water to be used is for domestic purposes only; and
6. The water district makes a joint application with the property owner on which the residence is located for the new water connection.

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

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

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

13.15.150 Rules and regulations.

A. All rules and regulations herein contained or hereafter adopted by the city council with reference to the use of water from the water system of the city, or the time or manner of payment or appertaining in any way to the water supply of the city or its use, shall apply with equal force, so far as applicable, to all persons, firms or corporations who shall reside inside or outside the corporate limits of the city, except as such rules or regulations shall conflict with the terms of this chapter.

B. The director of public works may develop such other rules and regulations as determined necessary and with the concurrence of the city manager.

C. All customers shall comply with all applicable state and federal regulations. [Ord. 1040, 10-15-48. Code 2001 § 52.15.]

Penalty: See NMC 13.15.290.

Article II. Cross-Connections

13.15.160 Purpose and scope.

The purpose of this article is to protect the public health of water consumers by the control of actual and/or potential cross-connections to customers. [Ord. 2146, 7-9-84. Code 2001 § 52.30.]

13.15.170 Definitions.

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

“**Backflow**” means the undesirable reversal of water or mixtures of water and other liquids, gases or other substances into the distribution pipes of the potable supply of water from any source or sources.

“**Backflow prevention device (approved)**” means a device that has been investigated and approved by the regulatory agency having jurisdiction. The approval of backflow prevention devices by the regulatory agency should be on the basis of a favorable laboratory and field evaluation report by an “**approved testing laboratory**” recommending the approval.

“**Backflow prevention device (type)**” means any approved device used to prevent backflow into a potable water system. The type of device used should be based on the degree of hazard, either existing or potential.

“**Contamination**” means the entry into or presence in a public water supply of any substance which may be deleterious to health and/or quality of the water.

“**Cross-connection**” means any unprotected actual or potential connection or structural arrangement between a public or a consumer’s potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas or substance other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices and other temporary or permanent devices through which or because of which backflow can or may occur are considered to be cross-connections.

“**Director**” means the director of public works of the City of Newberg or designee.

“**Hazard, degree of**” shall be derived from the evaluation of a health, system, plumbing or pollutional hazard.

“**Hazard, health**” means an actual or potential threat of contamination of a physical or toxic nature to the public potable water system or the consumer’s potable water system that would be a danger to health.

“**Hazard, plumbing**” means an internal or plumbing type cross-connection in a consumer’s potable water system that may be either a pollutional or a contamination-type hazard. This includes, but is not limited to, cross-connections to toilets, sinks, lavatories, wash trays, domestic washing machines and lawn sprinkling systems. Plumbing-type cross-connections can be located in many types of structures including homes, apartment houses, hotels, and commercial or industrial establishments.

“**Hazard, pollutional**” means an actual or potential threat of severe danger to the physical properties of the public or consumer’s potable water system or of a pollution or contamination which would have a protracted effect on the quality of the potable water in the system.

“**Health Division Officer**” means the Oregon State Health Division Officer, or authorized agent.

“**Potable water supply**” means any system of water supply intended or used for human consumption or other domestic use. [Ord. 2146, 7-9-84. Code 2001 § 52.31.]

13.15.180 Cross-connections.

The installation or maintenance of a cross-connection which will endanger the water quality of the potable water supply system of the city shall be unlawful and is prohibited. Any such cross-connection now existing or hereafter installed is declared to be a public hazard and the same shall be abated. The control or elimination of cross-connections shall be in accordance with this chapter and in compliance with OAR Chapter 333, Public Water Systems. The director shall have the authority to establish requirements more stringent than state regulations if the director deems that the conditions so dictate. The city shall adopt rules and regulations as necessary to carry out the provisions of this chapter. The director is authorized to enforce the provisions of this chapter in the inspection of existing, new and remodeled buildings. [Ord. 2146, 7-9-84. Code 2001 § 52.32.]

Penalty: See NMC 13.15.290.

13.15.190 Use of backflow prevention devices.

A. No water service connection to any premises shall be installed or maintained by the city unless the water supply is protected as required by state law and regulation and this chapter. Service of water to any premises shall be discontinued by the city if a backflow prevention device required by this chapter is not installed, tested and maintained, or if it is found that a backflow prevention device has been removed, bypassed, or if an unprotected cross-connection exists on the premises. Service will not be restored until the conditions or defects are corrected.

B. The customer’s system should be open for inspection and testing at all reasonable times to authorized representatives of the city to determine whether cross-connections or other structural or sanitary hazards, including violations of these regulations, exist. When such a condition becomes known, the director shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with the state and city statutes relating to plumbing and water supplies and the regulations adopted pursuant thereto.

C. An approved backflow prevention device shall also be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served; but, in all cases, before the first branch line leading off the service line.

D. Backflow prevention devices shall be installed under circumstances including, but not limited to, the following:

1. Premises having an auxiliary water supply.
2. Premises having cross-connections that are not correctable, or intricate planning arrangements which make it impractical to ascertain whether or not cross-connections exist.
3. Premises where entry is restricted so that inspections for cross-connections cannot be made with sufficient frequency or at sufficiently short notice to assure that cross-connections do not exist.
4. Premises having a history of cross-connections being established or reestablished.
5. Premises on which a substance is handled under pressure so as to permit entry into the public water supply, or where a cross-connection could reasonably be expected to occur. This shall include the handling of process waters and cooling waters.
6. Premises where materials of a toxic or hazardous nature are handled in such a way that if back siphonage should occur, a serious health hazard might result.
7. The following types of facilities will fall into one of the above categories where a backflow prevention device is required to protect the public water supply. A backflow prevention device shall be installed at these facilities unless the city determines that no hazard exists:
 - a. Hospitals, mortuaries, clinics;
 - b. Laboratories;
 - c. Metal plating industries;
 - d. Piers and docks;
 - e. Wastewater treatment plants;
 - f. Food or beverage processing plants;
 - g. Chemical plants using a water process;
 - h. Petroleum processing or storage plants;
 - i. Radioactive material processing plants or nuclear reactors;
 - j. Facilities with fire service lines as specified by the Oregon State Health Division;
 - k. Other facilities which require cross-connection control through the use of backflow prevention devices as required by this chapter and OAR Chapter 333, Public Water Systems;
 - l. Water districts;
 - m. Water customers outside the city limits.

E. The type of protection device required shall depend on the degree of hazard which exists:

1. An air-gap separation or a reduced-pressure-principle backflow prevention device shall be installed where the public water supply may be contaminated with wastewater, industrial waste of a toxic nature, or other contaminant which could cause a health or system hazard.

2. In the case of a substance which may be objectionable but not hazardous to health, a double check valve assembly, air-gap separation, or a reduced-pressure-principle backflow prevention device shall be installed.

F. Backflow prevention devices required by this chapter shall be installed under the supervision, and with the approval, of the city.

G. Any protective device required by this chapter shall be approved by the director.

H. These devices shall be furnished and installed by and at the expense of a customer.

I. Inspections and Tests.

1. It shall be the duty of the customer-user at any premises where backflow prevention devices are installed, except as noted below for residential tests, to have certified inspections and operational tests made at least once per year. In those instances where the director deems the hazard to be great enough the director may require certified inspections at more frequent intervals. These inspections and tests shall be at the expense of the water user and shall be performed by a certified tester approved by the director. It shall be the duty of the director to see that these timely tests are made. The customer-user shall notify the director in advance when the tests are to be undertaken so that the director or representative may witness the tests, if so desired. These devices shall be repaired, overhauled or replaced at the expense of the customer-user whenever the devices are found to be defective. Records of the tests, repairs and overhaul shall be kept and copies sent to the director.

2. Residential tests shall be necessary on an annual basis if:

- a. There is an existing well on the property.
- b. A booster pump is needed to provide pressure to a residence.
- c. The director determines conditions warrant an annual inspection.

J. No underground sprinkling device will be installed without adequate backflow prevention devices.

K. Failure of the customer to cooperate in the installation, maintenance, testing or inspection of backflow prevention devices required by this chapter or by state law shall be grounds for the termination of water service to the premises.

L. Fill at approved site after receiving hydrant permit and only from city-provided hydrant meters. Responsible persons taking out a hydrant meter permit shall also certify that the truck has an air gap or check valve installed on the truck to prevent any potential cross-connection prior to receipt of the hydrant meter use permit.

1. No water shall be delivered to any structure hereafter built within the City of Newberg or within areas served by city water until the same shall have been inspected by the city for possible cross-connections and have been found free of same and approved.

2. Any construction for industrial or other purposes which is classified as hazardous facilities where it is reasonable to anticipate intermittent cross-connections, or as determined by the director, shall be protected by the installation of one or more backflow prevention devices at the point of service from the public water supply or any other location designated by the city.

3. Inspections shall be made at the discretion of the director of all buildings, structures, or improvements for the purpose of ascertaining whether cross-connections exist. The inspections shall be made by the city. [Ord. 2146, 7-9-84. Code 2001 § 52.33.]

Penalty: See NMC 13.15.290.

Cross-reference: See ORS 537.460 pertaining to water conservation and ORS 448.131 pertaining to water quality. Also, see Chapter 46B of Title 36 ORS generally.

13.15.200 Liability.

This chapter shall not be construed to hold the city responsible for any damage to persons or property by reason of the inspection or testing herein, or the failure to inspect or test or by reason of approval of any cross-connections. [Ord. 2146, 7-9-84. Code 2001 § 52.34.]

Article III. Water Emergencies

13.15.210 Application of regulations.

The provisions of this article shall apply to all persons using water both in and outside the city regardless of whether any person using water shall have a contract for water service with the city. [Ord. 2495, 5-18-98. Code 2001 § 52.45.]

13.15.220 Conservation policy.

The policy of the city is to encourage water conservation, which is the careful preservation and planned management of the city's water supply in order to preserve the resource. This means careful use of water in order to protect the city's water resources without creating an undue hardship on water users. Implementation of this policy shall include the following actions:

A. The city shall establish a water conservation program and periodically increase public awareness of the benefits of water conservation, including encouraging some or all of the following conservation measures on water use:

1. Landscape sprinkling for each landscaped area (i.e., sprinkler zone) shall be limited to 20 minutes per day. This requirement is waived for new landscaping within 180 days of occupancy of a facility.
2. No landscape sprinkling shall be allowed between 9:00 a.m. and 5:00 p.m. if the outside temperature exceeds 80 degrees Fahrenheit. This requirement is waived for new landscaping within 180 days of occupancy of a facility.
3. Residential and commercial landscape sprinkling on an alternate-day basis is encouraged. Even-numbered addresses may water on even-numbered days and odd-numbered addresses on odd-numbered days.
4. All water use with a hand-held hose is exempt from restrictions; however, water users are encouraged to monitor hand-held hose use.
5. All new construction and all repair and/or replacement of fixtures shall comply with the energy conservation provisions of the Oregon Specialty Codes.

B. The city shall actively educate the city utility water users on conservation through an ongoing water conservation education program.

C. The city manager or a designee shall annually establish a definitive conservation program with the major irrigation water users (based on summer water use), to include an alternate-day irrigation schedule and a compliance monitoring program. Water audits will be encouraged.

D. The city shall continue the ongoing water conservation efforts, including water line leak detection and repair, replacement of deteriorating pipe, and replacement/repair of older and under-registering water meters, providing water users with educational materials, and connecting lines which are dead end lines in order to increase water circulation in the system. [Ord. 2495, 5-18-98. Code 2001 § 52.46.]

Penalty: See NMC 13.15.290.

13.15.230 Curtailment policy.

A. The policy of the city is to curtail water use during drought conditions to ensure that the city has adequate fire flow and supply for essential service requirements. The purpose of this section is to curtail water use during times of critical water shortages due to severe droughts, reduction in treatment or pumping capability, equipment malfunctions, or other emergency situations where there may be an insufficient water supply. The mayor or city manager is empowered to declare a water crisis state of emergency if, in the opinion of the mayor or city manager,

the adequacy of the water supply for the city is sufficiently endangered to create a risk of danger to the health, safety and welfare of the people of the city.

B. Implementation of this policy shall include the following actions and such other actions as are deemed to be necessary subject to the judgement of the mayor or city manager:

1. The city shall restrict water use by all customer classes by using some or all of the following methods subject to the severity of the water shortage as determined by the city manager or a designee, and subject to the approval of the mayor or city manager and notification as provided for in NMC 13.15.250.
2. Curtailing water use shall include some or all of the following activities:
 - a. Sprinkling, watering or irrigation of shrubbery, trees, lawns, grass, ground covers, plants, vines, gardens, vegetables, flowers or any other vegetation. On request, the public works director may approve exceptions for new landscaping that previously has been planted, but not established.
 - b. Washing automobiles, trucks, trailers, trailer houses, motorbikes, boats, or any other type of mobile equipment.
 - c. Washing sidewalks, driveways, parking lots, tennis courts, filling station aprons, porches and other hard surface areas.
 - d. Washing the exteriors of dwellings; washing the exteriors or interiors of office buildings.
 - e. Operating any ornamental fountain, scenic or recreational pond or lake or other structure using water similarly, except for the minimum quantity necessary to support fish life.
 - f. Filling, refilling or adding water to any swimming or wading pool or hot tub not employing a filter and recirculating system nor evaporation covers, except where the use of the pool or hot tub is required by a doctor.
 - g. Permitting the escape of water through defective plumbing.
 - h. Using water for construction projects.
 - i. Serving customers water in a restaurant unless requested. [Ord. 2495, 5-18-98. Code 2001 § 52.47.]

Penalty: See NMC 13.15.290.

13.15.240 Emergency powers.

As provided in this chapter, the city expressly reserves the right to discontinue furnishing water to any and all water users, and consumers outside the corporate limits of the city, in the event of water shortage or other public emergency or catastrophe. Any water-saving measures that in the opinion of the mayor or city manager are reasonable and necessary to protect the health, safety and welfare of the people of the city may be implemented to address the emergency. These measures shall be in writing, and shall state the effective time and date of the measure. [Ord. 2495, 5-18-98. Code 2001 § 52.48.]

13.15.250 Notification.

A. If a water shortage is anticipated to occur or actually occurs, the public works director or designee shall inform the mayor or city manager when water consumption exceeds production and available water storage is approaching the minimum quantity required by the city to meet fire protection and other essential demands.

B. Upon notification, the mayor or city manager shall see that the following actions are taken:

1. On receipt of this notification, the mayor or city manager may impose the water curtailment measures deemed necessary to address the situation pursuant to NMC 13.15.230, effective immediately or at the date and time indicated in the notice. The water curtailment measures shall be in writing and prepared for general release to the city water utility customers, city council and other interested parties.

2. Notification in accordance with this article shall then commence as follows:

- a. The mayor or city manager, or a designee, shall notify each city council member by telephone, with a written statement to follow, or in writing, of the curtailment measures within six hours.
- b. The curtailment measures shall be publicly announced by any means reasonably necessary to give notice to the city water utility customers.

3. Each announcement shall state the action taken by the mayor or city manager, including the time the curtailment measures became or will become effective and the announcement shall specify the particular curtailment measures to be imposed. Any water user aggrieved by the proposed curtailment shall immediately, upon notice, contact the mayor or city manager to discuss and resolve the grievance.

4. Whenever the mayor or city manager finds that the conditions which gave rise to the water curtailment measures no longer exist, the mayor or city manager may declare the curtailment measures terminated in whole or in part, effective immediately on announcement. The announcement shall be in writing. The mayor or city manager shall notify the city council pursuant to this article and take whatever actions are necessary to give notice to the city water utility customers. [Ord. 2495, 5-18-98. Code 2001 § 52.49.]

13.15.260 Exception to maintain sanitation.

The city public works director or a designee, after written notice to the mayor or city manager, shall have the authority to permit a reasonable use of water in any case necessary to maintain adequate health, safety and sanitation standards. [Ord. 2495, 5-18-98. Code 2001 § 52.50.]

13.15.270 Length of the curtailment measures.

The length of curtailment measures established by the mayor or city manager shall remain in effect until terminated by announcement of the mayor or city manager in accordance with this article. [Ord. 2495, 5-18-98. Code 2001 § 52.51.]

13.15.280 Authority of officer.

Any police officer or other employee of the city may enter upon the premises of any person for the purpose of reducing the flow of any water used contrary to the provisions of this article, providing that the measures shall not be taken until the following have occurred:

- A. The person in violation has been cited once for a violation of this article.
- B. The person has had served upon them written notice to cease and desist any further violation of any measures imposed under this article. [Ord. 2495, 5-18-98. Code 2001 § 52.52.]

Article IV. Penalty

13.15.290 Penalty.

A. Any person, firm or corporation or any agent or employee of any person, firm or corporation violating the provisions of NMC 13.15.010 through 13.15.200 shall have committed a city Class 2 civil infraction and shall be processed in accordance with the procedure set forth in the uniform civil infraction procedure ordinance, Chapter 2.30 NMC. Each day of continuing violation shall constitute a separate offense.

B. Violation of a duly written and noticed water curtailment measure or NMC 13.15.210 et seq. shall be a city Class 3 civil infraction and shall be processed in accordance with the procedure set forth in the uniform civil infraction procedure ordinance, Chapter 2.30 NMC. Each day in which any such violation shall continue shall be deemed a separate offense. [Ord. 2553, 1-7-02; Ord. 2495, 5-18-98; Ord. 2163, 4-1-85; Ord. 2146, 7-9-84; Ord. 1040, 10-15-48. Code 2001 § 52.99.]

Chapter 13.20
STORMWATER SYSTEM

Sections:

Article I. General Provisions

- 13.20.010 Findings and necessity.
- 13.20.020 Definitions.
- 13.20.030 Drainage master plan.
- 13.20.040 Stormwater system management.

Article II. Stormwater Management Fee

- 13.20.050 Stormwater management fee imposed.
- 13.20.060 Administrative process for setting and amending stormwater management fee.
- 13.20.070 Fee adjustments and appeals.
- 13.20.080 Credits.

Article III. Property Transfers and Design Standards

- 13.20.090 Property transferred to system.
- 13.20.100 Design standards.

Article IV. Penalty

- 13.20.110 Penalty.

Cross-reference: Wastewater, see Chapter 13.10 NMC.

Article I. General Provisions

13.20.010 Findings and necessity.

A. The city finds and declares that, absent effective maintenance, operation, regulation and control, existing stormwater drainage conditions in all areas within the city constitute a potential hazard to the health, safety and general welfare of the public.

B. The city council further finds that natural and manmade stormwater facilities and conveyances constitute a stormwater system, and that effective improvement, regulation and control of stormwater through formation, by the city, of a stormwater system (“system”) requires the transfer to the system of all stormwater facilities and conveyances and related rights belonging to the city. [Ord. 2571, 5-5-03. Code 2001 § 53.01.]

13.20.020 Definitions.

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

“**Equivalent dwelling unit (EDU)**” means a configuration of development, or impervious surfaces on a parcel, deemed to contribute an amount of runoff to the city’s stormwater system equal to that runoff created and contributed to the system by the average single-family residential parcel.

“**Impervious surface**” means the hard surface area that either prevents or retards entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions. “**Impervious surface**” includes, but is not limited to, rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots or storage areas, and trafficked gravel or other surfaces that impede the natural infiltration or runoff of surface water.

“**Parcel, developed**” means any parcel that has been altered by grading or filling of the ground surface, or by construction of an improvement or impervious surface area which affects the natural hydraulic properties of the parcel.

“**Parcel, undeveloped**” means any parcel that has not been altered by grading or filling of the ground surface, or by construction of an improvement or impervious surface area which affects the natural hydraulic properties of the parcel.

“**Stormwater**” means stormwater, ground water, surface drainage, subsurface drainage, spring water, well overflow, roof drainage and other like drainage other than wastewater or industrial wastewater, as those latter terms are defined in NMC 13.10.040.

“**Stormwater system**” or “**system**” means the combination of both artificial and natural systems of publicly owned and/or operated wastewater systems, drains, ditches, canals, culverts, detention/retention ponds, dams and other water control facilities used for collecting and transporting stormwater. [Ord. 2571, 5-5-03. Code 2001 § 53.02.]

13.20.030 Drainage master plan.

The city council shall adopt a drainage master plan (“**the plan**”), which shall be periodically updated on not less than a five-year cycle. Expansion of the system shall be in accordance with the most current Drainage Master Plan. In addition, fees, including systems development charges, shall be adopted to permit implementation of the plan. Systems development charges shall be adopted consistent with Chapter 13.05 NMC, Article I. [Ord. 2571, 5-5-03. Code 2001 § 53.03.]

13.20.040 Stormwater system management.

A. The city, through its community development-public works department, shall have all necessary authority and responsibility for the planning, design, construction, maintenance, administration and operation of the stormwater system.

B. The city council shall, as part of the annual budget process, adopt a budget for the stormwater system (including costs for maintenance, operation, debt service and construction of the system) and may include other information, such as field activities, accomplishments and the upcoming fiscal year’s priorities for the system. [Ord. 2571, 5-5-03. Code 2001 § 53.04.]

Article II. Stormwater Management Fee

13.20.050 Stormwater management fee imposed.

A. All in-city customers of the city’s water and wastewater systems and those persons otherwise responsible for impervious surfaces within the city, which contribute stormwater runoff to the system or who otherwise use or benefit from the system, are responsible for paying a stormwater management fee (“SWMF”).

B. Billing.

1. Bills for the SWMF shall be mailed or otherwise delivered to the address specified in the application for water service for the affected parcel, the owner and/or occupant of which shall be deemed to be the responsible party for purposes of payment.
2. In the event another person or party is responsible, then that person or party shall give notice of the responsibility in writing to the city’s finance department.

C. Unpaid Bills to Become Lien on Property.

1. Any amount of the SWMF remaining unpaid for a period of 30 days or more from the date of the billing shall become an assessment lien on the affected property.
2. In addition to any other method provided for by city code or state law for the foreclosure or collection of liens, the lien resulting from nonpayment of the utility fee may be collected and enforced consistent with the terms of ORS 223.505 through 223.595 and ORS 223.605 through 223.650. [Ord. 2571, 5-5-03. Code 2001 § 53.10.]

Cross-reference: See Chapters 311 and 312 of Title 29 ORS pertaining to foreclosure of property tax liens.

13.20.060 Administrative process for setting and amending stormwater management fee.

A. The just and equitable SWMF shall be fixed at such amounts to ensure the financial self-sufficiency of the stormwater system.

B. The setting of the amount of the SWMF and amendments thereto shall be in accordance with the administrative process as set forth in Chapter 2.15 NMC, Article III (citizens' rate review committee process).

1. Pursuant to NMC 2.15.130, the city council assigns the citizens' rate review committee the powers and duties necessary to conduct the process for setting the SWMF in accordance with the process used to establish the city's water and wastewater rates.

2. The city council shall by resolution set the fee amount and any amendment thereto. [Ord. 2571, 5-5-03. Code 2001 § 53.11.]

13.20.070 Fee adjustments and appeals.

A. Any nonresidential customer who believes the stormwater management fee as applied and billed to the customer's parcel is noncompliant with the rate structure created by the rate resolution described in NMC 13.20.050(A) may appeal such billing within 30 days of the date of the billing.

1. The appeal:

a. Shall be in writing;

b. Shall be addressed to the community development director;

c. Shall set out a brief explanation as to why the customer believes the amount of the billing is in error; and

d. Cannot extend the period of payment for the charge.

2. The public works director or designee shall review the appeal, to which public works director or designee shall respond in writing within 60 days of its receipt.

3. While the appeal is pending before the public works director, no lien shall attach for the disputed amount.

B. If an adjustment is granted reducing the billing charge, the customer shall be refunded the amount overpaid for the current calendar year.

C. If the customer has been undercharged, the new recomputed charges will apply in full to the next month's bill.

D. No more than one appeal may be made per calendar year unless there is a change in the lawful use of the property.

E. Within 14 days of the date of the decision, the customer may appeal the decision of the public works director to the city manager.

1. The appeal shall:

a. Be in writing;

b. Be addressed to the city manager; and

c. Set out why the decision of the public works director is in error.

2. The city manager shall review the appeal, to which the city manager shall respond with a decision in writing within 14 days of its receipt.

3. While an appeal to the city manager is pending, no lien shall attach to the affected property for the disputed amount.

4. The city manager's decision shall be final and appealable only by way of writ of review (ORS 34.010 through 34.100). [Ord. 2571, 5-5-03. Code 2001 § 53.12.]

13.20.080 Credits.

A. Adjustments or reductions of the fee can be made upon application of the owner of developed property to the city engineer and upon certification by the city engineer that the owner or the property meets one or more of the criteria of subsection (E) or (F) of this section and an adjustment in the amount certified by the city engineer is therefore appropriate.

B. For the first year in which a stormwater management fee credit is adopted, adjustments certified by the city engineer during that year shall be applied retroactively to the date of adoption of this code provision, if the city engineer is satisfied that the circumstances under which the adjustment is certified existed on the date the fee was first applied to the property. In subsequent years, the date on which an adjustment is certified as appropriate by the city engineer shall be the date on which the adjustment takes effect; the adjustment shall be prorated from that date for the balance of that year.

C. Once certified, adjustments shall be effective for as long as the conditions and circumstances under which the adjustment was granted continue, and shall not be effective for the upcoming year without renewal on or before December 31st of each year. Renewals of adjustments may be granted upon reapplication by the owner of the property to the city engineer and upon the city engineer's determination that the property owner is in full compliance with the terms of any existing stormwater maintenance agreement. If an adjustment lapses for any reason, the property owner must reapply to the city engineer in order to re-institute the adjustment.

D. Whenever the city engineer becomes aware, through investigation upon complaint, through random inspection, or through any other means, that the owner has failed to maintain the conditions and circumstances under which an adjustment has been given, or has failed to perform under a required stormwater maintenance agreement or has failed to comply with the requirements of an approved program listed in this section, the city engineer may immediately revoke an adjustment by sending written notice of the revocation by certified mail, return receipt requested, to the owner of the property. The city engineer's revocation may be appealed by the owner under NMC 13.20.070. The city engineer shall notify the finance director of the revocation of an adjustment, and the revocation shall be effective 10 working days after the date of the written notification, if the owner has not filed an appeal. If the owner files an appeal and the revocation is upheld, then the revocation becomes effective on the date of the city engineer's revocation.

E. Developed non-single-family property where stormwater management is provided by the owner on site, where said stormwater management exceeds minimum stormwater design standards and permitted conditions for development, and where the owner has entered into an appropriate stormwater maintenance agreement with the city engineer may be eligible for adjustments under the circumstances listed below. The listed adjustments are a maximum amount indicated in the subsection and a lesser amount may be certified by the engineer.

1. For on-site stormwater management provided to standards which protect against the two-year, 24-hour flood, the owner may receive a 10 percent adjustment of the fee which is not cumulative with subsections (E)(2) through (E)(4) of this section.
2. For on-site stormwater management provided to standards which protect against the 10-year, 24-hour flood, the owner may receive a 20 percent adjustment of the fee which is not cumulative with subsections (E)(1) through (E)(4) of this section.
3. For on-site stormwater management provided to standards which protect against the 25-year, 24-hour flood, the owner may receive a 30 percent adjustment of the fee which is not cumulative with subsections (E)(1) through (E)(4) of this section.

4. For on-site stormwater management provided to standards which protect against the 100-year, 24-hour flood, the owner may receive a 35 percent adjustment of the fee which is not cumulative with subsections (E)(1) through (E)(3) of this section.
5. For qualified best management practices of paved surfaces, the owner may receive an adjustment of 10 percent of the fee.
6. For qualified best management practices which improve the water quality of stormwater runoff, the owner may receive a 20 percent adjustment of the fee.
7. Where an ongoing qualified educational program is provided for water quality and quantity protection, the owner may receive a 10 percent adjustment of the fee.
8. Adjustments granted for supplying on-site stormwater management, as described in subsections (E)(1) through (E)(7) of this section, may be combined so long as the maximum adjustment granted under this subsection does not exceed 50 percent.

F. Developed single-family residential property where stormwater management is provided by the owner on site, where said stormwater management exceeds minimum stormwater design standards and permitted conditions for development, and where the owner has entered into an appropriate stormwater maintenance agreement with the city engineer may be eligible for the following adjustments under the circumstances listed below. The adjustments applicable in the subsections dealing with the reduction are a maximum amount indicated in the subsection, and a lesser amount may be certified by the engineer.

1. For a minimum square footage of pervious patios and walkways, the owner may receive a 10 percent adjustment of the fee.
2. For a pervious driveway, the owner may receive a 25 percent adjustment of the fee.
3. For new or existing qualifying trees, not including trees planted in the public right-of-way, the owner may receive a 10 percent adjustment of the fee.
4. For vegetated swales or infiltration planters not in the public right-of-way, the owner may receive a 10 percent adjustment of the fee.
5. For a rain garden built with qualifying plants and to qualifying specifications, the owner may receive a 25 percent adjustment of the fee.
6. Adjustments granted for supplying on-site stormwater management, as described in subsections (F)(1) through (F)(5) of this section, may be combined so long as the maximum adjustment granted under this subsection does not exceed 35 percent. [Ord. 2727 Exh. A, 6-7-10; Ord. 2609, 10-18-04; Ord. 2606, 8-2-04; Ord. 2571, 5-5-03. Code 2001 § 53.13.]

Article III. Property Transfers and Design Standards

13.20.090 Property transferred to system.

Title and all other incidents of ownership of the following assets are transferred to and vested in the system: all properties, interests and physical and intangible rights of every nature owned or held by the city, however acquired, as they relate to stormwater, including (without limitation), all properties, interests, and rights acquired by adverse possession or prescription, directly or through another, through, under, into or over lands, watercourses, ground water, drywells, pipes, channels, detention/retention facilities, canals, streams, and ponds, beginning in each instance at a point where stormwater first enters the system and ending at a point where the stormwater exits from the system to the full extent of inundation caused by storm or flood conditions. [Ord. 2571, 5-5-03. Code 2001 § 53.20.]

13.20.100 Design standards.

The city engineer shall maintain appropriate Public Works Design and Construction Standards ~~design standards~~ for the system that may be periodically approved by the city council. All design shall be in accordance with the most current version of the standards. [Ord. 2571, 5-5-03. Code 2001 § 53.21.]

Article IV. Penalty

13.20.110 Penalty.

A. No person shall break, damage, destroy, or uncover any structure, appurtenance or equipment that is part of the stormwater system.

B. Any person violating this provision shall have committed a Class 1 civil infraction, and shall be processed in accordance with the procedure set forth in Chapter 2.30 NMC.

C. Each day constitutes a separate offense. [Ord. 2571, 5-5-03. Code 2001 § 53.99.]

Chapter 13.25
STORMWATER MANAGEMENT

Sections:

Article I. General Provisions

- 13.25.010 Interpretation.
- 13.25.020 Definition of terms.

Article II. Erosion Control

- 13.25.030 Purpose and intent.
- 13.25.040 Scope.
- 13.25.050 Exemptions.
- 13.25.060 Erosion and sediment controls.
- 13.25.070 Erosion and sediment control (ESC) plans.
- 13.25.080 Erosion and sediment control plan revisions.
- 13.25.090 Inspections.

Article III. Illicit Discharge Detection and Elimination

- 13.25.100 Purpose and intent.
- 13.25.110 Scope.
- 13.25.120 General.
- 13.25.130 Exempt discharges.
- 13.25.140 Conditionally exempt discharges.
- 13.25.150 Illicit connections.
- 13.25.160 Illegal dumping.
- 13.25.170 Riparian destabilization.
- 13.25.180 Discharges in violation of NPDES permit.
- 13.25.190 Commercial and industrial discharges.
- 13.25.200 Spill prevention plans.
- 13.25.210 Spill notification.
- 13.25.220 Inspection authority.
- 13.25.230 Suspension of discharge access.
- 13.25.240 Remediation.

Article IV. Stormwater Management

- 13.25.250 Purpose and intent.
- 13.25.260 Scope.
- 13.25.270 Stormwater treatment.
- 13.25.280 Facility design.
- 13.25.290 Facility responsibility.
- 13.25.300 Maintenance.
- 13.25.310 Inspections.
- 13.25.320 Variances.

Article V. Enforcement and Penalties

- 13.25.330 General.
- 13.25.340 Concealment.
- 13.25.350 Notice of violation.
- 13.25.360 Stop work order.
- 13.25.370 Summary abatement.

The Newberg Municipal Code is current through Ordinance 2779, passed February 17, 2015.

- 13.25.380 Appeal procedure.
13.25.390 Penalties.

Cross-references: Citizens' rate review committee, see NMC 2.15.120 et seq.; stormwater system, see Chapter 13.20 NMC; system development charges, see Chapter 13.05 NMC, Article I.

Article I. General Provisions

13.25.010 Interpretation.

A. The provisions of this code shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

B. Conflict with Public Provisions.

1. Public Provisions. The regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. Where any provision of this code imposes restriction different from those imposed by any other provision of this code or any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.
2. Private Provisions. This code is not intended to abrogate any easement, covenant, or any other private agreement or restriction; provided, that where the provisions of this code are more restrictive or impose higher standards or regulations than such easement, covenant or other private agreement or restriction, the requirements of this code shall govern. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive or of a higher standard than this code, and such private provisions are not inconsistent with this code or determinations thereunder, then such private provisions shall be operative and supplemental to this code and determinations made thereunder. [Ord. 2754 Exh. A, 6-18-12.]

13.25.020 Definition of terms.

“**Applicant**” means the owner or authorized agent acting on behalf of the owner.

“**Channel morphology**” means the stream channel type and the physical characteristics of the streambed.

“**City**” means the City of Newberg, Oregon.

“**Common development plan**” means all lands included within the boundary of a certified survey map or subdivision plat created for the purpose of development or sale of property where integrated, multiple, separate and distinct land developing activity may take place at different times by future owners.

“**Demolition**” means any act or process of wrecking or destroying a building or structure.

“**DEQ**” means the Oregon Department of Environmental Quality.

“**Design standards manual**” means the current version of the City of Newberg design standards manual and specifications.

“**Design storm**” means a hypothetical discrete rainstorm characterized by a specific duration, temporal distribution, rainfall intensity, return frequency and total depth of rainfall.

“**Development**” means residential, commercial, industrial, or institutional construction, alteration, or other improvement which alters the hydrologic characteristics of a property or properties.

“**Director**” means the City of Newberg’s director of public works or their authorized representative.

“**Easement**” means areas located outside of dedicated right-of-way and which are granted to the city for special uses. Easements may also be granted to noncity entities such as franchise utility companies for their uses.

“**Erosion**” means the weathering of a surface as a result of the movement of wind, water, ice, snow, or land disturbance activities.

“**Erosion and sediment control**” means a structural or nonstructural device that is implemented to prevent erosion and sedimentation.

“**Erosion and sediment control (ESC) plan**” means a plan submitted to the city with scaled drawings, and the methods and types of devices to be implemented during the project to prevent erosion and sedimentation.

“**Excavation**” means an act by which soil or rock is cut, dug, quarried, uncovered, removed, displaced, or relocated.

“**Fill**” means a deposit of soil or other earth material placed by artificial means.

“**Grading**” means any act by which soil is cleared, stripped, stockpiled, excavated, scarified, filled, or any combination thereof.

“**Ground-disturbing project**” means a project that includes activities that have the potential to create soil erosion from wind, precipitation, or ice creating sediment deposits in watercourses or land within the city including, but not limited to, demolition, clearing and grubbing, grading, excavating, transporting, and filling of land.

“**Hazardous materials**” means any material or combination of materials which due to its quantity, concentration, or physical, chemical, or infectious characteristics may cause or contribute to a substantial hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“**Illicit connections**” means any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the stormwater system.

“**Illicit discharge**” means any direct or indirect nonstormwater discharge to the stormwater system except discharges regulated under a NPDES permit or exempted by this chapter.

“**Immediate threat**” means a situation that the director determines would cause harm to the public, environment, or downstream stormwater facilities before the situation can be alleviated or repaired.

“**Impervious**” means the hard surface area that either prevents or greatly retards infiltration and causes water to run off the surface in greater quantities or at an increased rate of flow from that present in undeveloped conditions. Surfaces which would ordinarily be considered pervious are considered impervious if they do not allow natural infiltration of stormwater.

“**Infiltration**” means the passage or movement of water into the soil subsurface.

“**Maintenance agreement**” means an agreement between the city and a maintenance organization for private stormwater facilities detailing the operation and maintenance requirements of the facilities.

“**Maintenance organization**” means the person(s), company, or nonprofit organization(s) responsible for long-term operation and maintenance of stormwater facilities recorded in the maintenance agreement.

“**National Pollutant Discharge Elimination System (NPDES)**” means the general, group, and individual stormwater discharge permits which regulate facilities defined in federal NPDES regulations and regulated through the Oregon Department of Environmental Quality.

“**Net impervious area**” means the increase in impervious area on a property after a project is completed.

“**Nonstormwater discharge**” means any discharge to the stormwater system that is not composed entirely of stormwater.

“Pollution” means a contamination or other degradation of the physical, chemical, or biological properties of a watercourse; or a discharge into a watercourse that could create a public nuisance or contaminate a watercourse such that its beneficial use, aquatic habitat, public health or public safety is at risk.

“Project” means an activity that creates impervious areas.

“Project start” means the first ground-disturbing activity associated with a project including, but not limited to, preparatory activities such as clearing, grubbing, grading, excavating, and filling.

“Project summary” means a narrative that includes the project description, location, emergency contacts, and other information determined by the public works director such that the project can be located and a determination made regarding methods of stormwater management.

“Responsible party” means a person or entity holding fee title to a property, tenant, lessee, or a person or entity who is acting as an owner’s representative including any person, company, nonprofit organization or other entity performing services that are contracted, subcontracted, or obligated by other agreement to meet the requirements of this code.

“Sediment” means soil or other surface material held in suspension in surface water or stormwater.

“Sedimentation” means the process or action of sediment being deposited as a result of decreased water volume or velocity.

“Sensitive resources” means any area that, due to the natural resources or lack of filtering capacity present, is significantly more susceptible to the negative impacts of sedimentation, erosion and stormwater. Examples include direct hydrologic connections to lakes, streams, wetlands, springs, seeps, or other water resources; conservation areas; highly erodible soils and steep slopes; riparian buffers; high water tables; minimal depth to bedrock; infiltration areas, significant natural areas and environmental corridors; areas of historical importance; or areas inhabited by endangered species.

“Site” means any property or combination of properties where a project is being proposed or completed.

“Slope” means the increase in elevation of a ground surface expressed as a ratio of horizontal distance to vertical distance.

“Soil” means natural deposits overlying bedrock.

“Stabilization” means the use of vegetative or structural techniques to prevent soil movement.

“Stabilize” means when vegetation or surfacing material is in place and well-established providing an area with maximum erosion protection.

“Stockpile” means storage of any soil, sand, gravel, clay, mud, debris, refuse, or any other material, organic or inorganic, in a concentrated area.

“Stop work order” means an order issued by the director which requires all project activity, except those specifically stated in the stop work order, to cease on the site.

“Stormwater” means water that originates as precipitation on a particular site, basin, or watershed and flows over land or impervious surfaces without percolating into the ground.

“Stormwater facility” means a location where stormwater collects to filter, retain, or detain stormwater for the purposes of water quality or quantity management. The facility may be structural or nonstructural, has been designed and constructed according to city design standards, and has been required by the city.

“Stormwater facility operations and maintenance plan” means the required steps to be undertaken by an owner or maintenance organization to ensure proper functioning of a stormwater facility.

“**Stormwater management**” means techniques or structures intentionally used to temporarily or permanently reduce or minimize the adverse effects of stormwater velocities, volumes, and water quality on receiving watercourses. A series of techniques or structures constitutes a stormwater system or treatment train.

“**Stormwater system**” means the combination of both artificial and natural systems of drains, ditches, canals, culverts, detention ponds, retention ponds, dams, and other water control facilities used for collecting and transporting stormwater.

“**Street wash water**” means water used to wash streets after emergency personnel actions or when the organization or person receives prior city approval to discharge as long as the area is previously cleaned using dry methods such as a sweeper or broom and the discharge to the stormwater system does not exceed federal or state water quality standards.

“**Structure**” means anything constructed or built, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

“**TMDL**” means total maximum daily load.

“**Visible and measurable erosion**” means the deposition of soil, sand, dirt, dust, mud, rock, gravel, refuse, or any other organic or inorganic material exceeding a volume of one-half cubic foot into a public right-of-way or public property, or any component of the city’s stormwater system either by direct deposit, dropping, discharge, or as a result of erosion; a flow of turbid or sediment-laden water beyond the property of origin or into the city’s stormwater system; or earth slides, mud flows, land slumping, slope failure, or other earth movement that leaves, or is likely to leave, the property of origin.

“**Watercourse**” means any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, gully, ravine, swale, or wetlands in which water flows either continuously or intermittently. The width of the watercourse includes any adjacent area that is subject to inundation from overflow or floodwaters from the design storm.

“**Wetlands**” means transitional lands where the water table is usually at or near the land surface or the land is covered by shallow water. Wetlands:

1. Support, at least periodically, plants that thrive in saturated conditions;
2. Contain predominately undrained hydric soil; or
3. Are saturated or covered with shallow water at some time during the growing season of each year. [Ord. 2754 Exh. A, 6-18-12.]

Article II. Erosion Control

13.25.030 Purpose and intent.

A. The purpose of these regulations is to protect, maintain, and enhance public health, public safety, and public welfare by establishing minimum requirements and procedures to control sources of windborne and waterborne erosion and the effects associated with sediment that results from erosion. The application of this code and provisions expressed herein are minimum requirements.

B. The intent is to:

1. Minimize soil erosion;
2. Minimize flooding, sedimentation, and erosion of local watercourses;
3. Ensure proper maintenance and inspection of erosion and sediment controls;
4. Ensure proper storage of construction materials and staging and proper storage of debris on site; and

5. Minimize effects of projects on downstream stormwater facilities and watercourses. [Ord. 2754 Exh. A, 6-18-12.]

13.25.040 Scope.

A. No person shall undertake a ground-disturbing project without having provided erosion and sediment controls that address erosion caused by wind or rain unless exempted by NMC 13.25.050. In addition to complying with the requirements of this code, each site shall comply with the Newberg comprehensive plan, the Newberg development code, and any other applicable City of Newberg codes or plans.

B. These requirements apply to:

1. The person undertaking a ground-disturbing project, the implementer of the project, and the person's successors in interest;
2. Projects which require a permit; and
3. Projects or activities not requiring a permit but which have the potential to generate discharges that are in violation of water quality standards.

C. Projects which do not require a permit and which are not exempt from the requirements of these regulations shall:

1. Notify the city when the project starts;
2. Comply with the basic erosion and sediment requirements listed in NMC 13.25.060; and be
3. Subject to the enforcement actions and penalties of these regulations.

D. Projects which do not require a permit but which violate basic erosion and sediment control requirements shall be subject to the penalties section of this code. [Ord. 2754 Exh. A, 6-18-12.]

13.25.050 Exemptions.

A. Agricultural activities that do not create a discharge of visible and measurable erosion to the stormwater system are exempt from these regulations unless identified by the city as having the potential to cause water quality violations.

B. Activities that comply with the requirements of their DEQ 401 Water Quality Certificate are exempted from these regulations unless they are identified by the city as requiring special considerations as defined by the erosion and sediment control manual.

C. Activities that comply with the requirements of permits issued by the Department of State Lands or the Army Corps of Engineers are exempted from these regulations unless they are identified by the city as requiring special considerations as defined by the erosion and sediment control manual.

D. Emergency actions to alleviate an immediate threat to public health and safety or to public or private property are exempt from these regulations.

E. Activities that do not disturb more than 500 square feet of land are exempt from these regulations; provided, that they:

1. Are not located in a floodplain or the Newberg stream corridor overlay sub-district; or
2. Do not discharge stormwater off site that exceeds the water quality limits imposed by the City of Newberg's Willamette River TMDL Implementation Plan, DEQ, or U.S. Environmental Protection Agency. [Ord. 2754 Exh. A, 6-18-12.]

13.25.060 Erosion and sediment controls.

A. Approval of erosion and sediment controls for a project does not, by itself, transfer responsibility from the responsible party to the city.

B. The city shall be notified when the project starts as defined by this code.

C. Types of erosion controls that are approved for projects within city limits are described in the erosion and sediment control manual.

D. Prior to ground disturbance, the responsible party shall ensure that erosion and sediment controls are properly installed and functioning to:

1. Minimize sediment transport from the site through the use of construction entrances and exits;
2. Protect stormwater system inlets that are immediately downstream of the site;
3. Minimize dust and other windborne erosion;
4. Stabilize soil in disturbed areas; and
5. Protect on-site and off-site soil stockpiles during rain events or when dust is raised by gusting winds.

E. The responsible party shall ensure that the following basic procedures are followed:

1. Use of dry methods, such as a shovel or broom, to remove soil or construction debris left or tracked into the public right-of-way by the end of the working day;
2. Inspect erosion and sediment controls weekly and after rain events; and
3. Provide proper storage and disposal of construction materials and waste.

F. Additional erosion and sediment controls may be required by the city if the site:

1. Has slopes of 10 percent or more;
2. Disturbs property within 100 feet of sensitive resources, watercourses, or the Newberg stream corridor overlay sub-district;
3. Disturbs 10,000 square feet or more of land at any one time;
4. Is identified by the city as having easily erodible soil, current severe erosion, or could affect adjacent properties or watercourses due to stormwater quality, flooding, erosion, or sedimentation;
5. Is identified by the city to potentially generate stormwater that would create a violation of DEQ water quality standards;
6. Is active between October 1st and April 30th; or
7. Has any other condition specified in the ESC manual or design standards manual as warranting special consideration. [Ord. 2754 Exh. A, 6-18-12.]

13.25.070 Erosion and sediment control (ESC) plans.

A. For projects requiring a city, state, or federal permit:

1. The approved ESC plan shall be available on site during active construction; and
2. Erosion and sediment controls shall be installed in accordance with the approved ESC plan or 1200-C permit prior to ground disturbance.

B. Applicants submitting permit applications or contract submittals shall, at the same time, submit either an ESC plan for review and approval by the city or a copy of the 1200-C documents submitted and approved by DEQ.

1. No permits shall be issued until the ESC plan is approved by the city or the applicant has provided a copy of the documents submitted to the DEQ for its 1200-C permit.
2. The ESC plan shall contain sufficient information to evaluate the proposed project's effect on adjacent and downstream public and private properties and on public health and safety.
3. Projects not subject to subsection (C) of this section shall provide an ESC plan developed by an erosion control professional that fulfills the requirements of the erosion and sediment control manual and the design standard manual.

C. Projects completed on a single lot, disturbing more than 500 square feet, and located on duplex or single-family residential lots shall provide a basic ESC plan to the city for review and approval that includes:

1. Scaled drawing of site with north arrow, legend, project location, on-site structures, and watercourses or other sensitive resources within 100 feet of the site;
2. Location and types of erosion controls;
3. Location of construction entrances, and exits and concrete washouts, and soil stockpiles;
4. Location of all trees with an eight-inch or larger DBH (diameter measured at breast height) within or adjacent to the site;
5. Grading plan and permit if required by the city;
6. Stormwater points of discharge;
7. Methods for revegetating the site after construction;
8. Storage locations and disposal methods for construction debris and toxic or hazardous materials used during the project;
9. Dust control methods;
10. Spill prevention and response procedures;
11. Inspection schedule;
12. Name and 24-hour emergency contact information for the person responsible for maintaining and inspecting erosion and sediment controls; and
13. Any other provisions required by the erosion and sediment control manual for small sites and projects. [Ord. 2754 Exh. A, 6-18-12.]

13.25.080 Erosion and sediment control plan revisions.

A. The city may require a revision to the ESC plan due to a change in the site conditions and the ability of erosion and sediment measures to adequately control:

1. Stormwater volume and velocity;
2. Stormwater quality to receiving watercourses; or
3. Additional loading that compromises the integrity of downstream stormwater facilities.

B. The following situations, while not exhaustive, can trigger revisions to ESC plans:

1. Improper functioning of approved erosion and sediment controls;

2. A change in project schedules such that the project will be active more than three months later than originally scheduled;
3. Changes in the assumptions used for the soil type, topography, hydrologic, or hydraulic conditions based on actual conditions discovered during inspections or construction that will affect the proper functioning of previously approved erosion and sediment controls;
4. Changes in location, excavation and fill volumes, or square footage of disturbed land that will affect the proper functioning of erosion and sediment controls on site; or
5. Changes in construction or maintenance materials or chemicals that affect the proper functioning of erosion and sediment controls.

C. The person responsible for erosion and sediment controls on the project shall immediately install functioning interim erosion controls and submit a revised ESC plan within three working days of receiving a notice of violation.

D. Revisions.

1. Revised plans shall provide an attached narrative with detailed specifications of any changes or additions to the current or proposed erosion and sediment controls.
2. The narrative accompanying the revised plan shall discuss the triggering situation, corrective action required, and a proposed solution that conforms to the requirements of the ESC manual.

E. The revised plan and erosion and sediment controls shall be immediately implemented upon the city's approval of the plan.

F. The applicant shall be responsible for any additional costs resulting from a revision to the original ESC plan. [Ord. 2754 Exh. A, 6-18-12.]

13.25.090 Inspections.

A. City Inspections.

1. The city shall inspect the site for compliance with these regulations.
2. The responsible party shall provide copies of all inspection records for a project within 24 hours of a request by the city.
3. During an emergency, the responsible party shall immediately provide the city with copies of all inspection records for a project.
4. The responsible party shall contact the city within 24 hours of placement of erosion and sediment controls.

B. Responsible Party Inspections.

1. The responsible party shall keep a maintenance and inspection log documenting the time and date of the inspection and any repairs, adjustments, maintenance, or replacements completed on the erosion and sediment controls.
2. During construction, inspections of erosion and sediment controls shall be conducted after a rain event or at least weekly during dry weather.
3. If a site will be inactive for more than 14 days, inspections shall be conducted every two weeks. [Ord. 2754 Exh. A, 6-18-12.]

Article III. Illicit Discharge Detection and Elimination

13.25.100 Purpose and intent.

A. The purpose of these regulations is to:

1. Ensure public health and safety;
2. Enhance the water quality of watercourses; and
3. Maintain and protect the stormwater system.

B. The intent of these regulations is to:

1. Reduce pollution in stormwater discharges;
2. Prohibit illicit and illegal discharges into the stormwater system including ditches and culverts;
3. Prohibit illicit connections to the stormwater system; and
4. Establish legal authority to inspect, monitor, and enforce compliance with these regulations. [Ord. 2754 Exh. A, 6-18-12.]

13.25.110 Scope.

A. These regulations apply to all discharges to the stormwater system or watercourses within the city limits that are not composed entirely of stormwater.

B. These standards are minimum standards and the city neither intends nor implies that compliance by any person with these requirements will ensure no contamination or pollution of watercourses. [Ord. 2754 Exh. A, 6-18-12.]

13.25.120 General.

A. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain, or discharge any material other than stormwater into the city's stormwater system, watercourses, or groundwater.

B. No person shall improperly store, handle, or apply any material that will cause or create, through its exposure to rainfall or stormwater, a discharge in violation of water quality standards in the receiving watercourse. [Ord. 2754 Exh. A, 6-18-12.]

13.25.130 Exempt discharges.

The following discharges are allowed under this code unless the director determines that they are, were, or will be a significant source of pollution:

- A. Diverted stream flows;
- B. Rising groundwater;
- C. Uncontaminated groundwater infiltration as defined by 40 CFR 35.2005(20);
- D. Uncontaminated pumped groundwater;
- E. Foundation or footing drains;
- F. Air conditioning condensate;
- G. Springs;
- H. Water from crawl space pumps;
- I. Flows from riparian habitats and wetlands;

- J. Discharges from fire-fighting activities;
- K. Discharges from irrigation, lawns, and gardens that do not violate water quality regulations; and
- L. Nonfoaming discharges from residential vehicle washing by city residents or by nonprofit organizations for fund-raising purposes. [Ord. 2754 Exh. A, 6-18-12.]

13.25.140 Conditionally exempt discharges.

The following discharges are allowed if they meet their respective restrictions and are not identified by the director as a significant pollution source:

- A. Dechlorinated, pH-adjusted, and controlled discharges from hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic testing that do not pose a threat of erosion to the receiving watercourse;
- B. Dechlorinated, pH-adjusted, and controlled discharges from swimming pools, hot tubs, and spas that do not pose a threat of erosion to the receiving watercourse. This exemption does not include filter backwash;
- C. Nonstormwater discharges regulated by a NPDES permit so long as the discharge complies with the permit limits and written approval has been granted by the director; and
- D. Street wash water. [Ord. 2754 Exh. A, 6-18-12.]

13.25.150 Illicit connections.

- A. The existence of illicit connections to the stormwater system is prohibited and a violation of this code.
- B. Illicit connections shall be disconnected from the stormwater system upon receipt of a written notice of violation. [Ord. 2754 Exh. A, 6-18-12.]

13.25.160 Illegal dumping.

- A. No person may cause or contribute to pollution of watercourses or the stormwater system.
- B. No person may cause or contribute to stormwater system or watercourse blockages.
- C. Materials deposited in proper waste receptacles for the purposes of collection are exempt from these requirements. [Ord. 2754 Exh. A, 6-18-12.]

13.25.170 Riparian destabilization.

- A. Any person owning property with either a watercourse running through or bounding the property lines shall keep and maintain that part of the watercourse within the property reasonably free of manmade trash, debris, and other obstacles that would pollute, contaminate, or impede the flow of the watercourse.
- B. Any person with a watercourse bounding or running through their property shall maintain native stream bank vegetation or provide other stabilization measures to protect the watercourse from erosion or degradation while, at the same time, not adversely affecting downstream properties or stormwater facilities. [Ord. 2754 Exh. A, 6-18-12.]

13.25.180 Discharges in violation of NPDES permit.

Any discharge that would result in or contribute to a violation of a NPDES permit either separately or in combination with other discharges is prohibited from discharge into the stormwater system or watercourses lying within the city limits. [Ord. 2754 Exh. A, 6-18-12.]

13.25.190 Commercial and industrial discharges.

- A. Commercial or industrial operations or businesses not covered by a NPDES permit shall follow proper disposal and spill prevention practices.
- B. Direct discharges or sheet flow to the stormwater system or watercourses within city limits is expressly prohibited unless listed as exempt or conditionally exempt in these requirements. [Ord. 2754 Exh. A, 6-18-12.]

13.25.200 Spill prevention plans.

Facilities that handle, store, or use hazardous or toxic substances in quantities that equal or exceed quantities listed in OAR 340-142-0050 or that are otherwise required by state or federal law to have a spill prevention plan shall provide a copy of the plan to the director. [Ord. 2754 Exh. A, 6-18-12.]

13.25.210 Spill notification.

A. In the event of the release or the imminent threat of a release of a hazardous or toxic material, the person owning or having control over the material shall immediately implement the applicable spill plan or other contingency plan document prepared in compliance with these regulations.

B. If a spill plan or contingency plan is not implemented for any reason, the person owning or having control over the material shall immediately take the following actions:

1. Activate alarms or otherwise warn persons in the immediate area;
2. Undertake every reasonable method to stop the spill and contain the oil or hazardous material;
3. Call 911 if there is a medical emergency or public safety hazard; and
4. Arrange for properly trained and equipped personnel or contractor to stop any continuing release and manage the specific material spilled.
 - a. Immediately hire a qualified contractor to respond and manage the spill if the necessary actions are beyond the ability of the responsible person's representatives on site or the responsible person's own response services will be delayed in arriving at the spill site.
 - b. If the person owning or having control over oil or hazardous material does not, or cannot, immediately arrange a response acceptable to the city, the city may dispatch a contractor and seek recovery of all costs incurred by the city resulting from this action.

C. Immediately report the spill or release as required by OAR 340-142-0040. [Ord. 2754 Exh. A, 6-18-12.]

13.25.220 Inspection authority.

A. Whenever the city has a reason to believe that there exists or potentially exists, in or upon any premises, any condition which constitutes a violation of this chapter, the city shall be permitted access to the property or facility to determine compliance. If the premises are unoccupied, the city may enter the property without permission if immediate abatement is required.

B. The city reserves the right to set up devices to conduct monitoring and sampling of discharges from the property or facility. [Ord. 2754 Exh. A, 6-18-12.]

13.25.230 Suspension of discharge access.

A. The city may suspend the ability to discharge into the stormwater system or watercourses when it is necessary to stop:

1. An actual or threatened discharge that presents or threatens to present a violation of water quality standards;
2. Repeated violations by a facility or person; or
3. A facility or person from continuing illicit discharges after they have been notified to cease and desist.

B. Resumption of a suspended discharge access without the prior approval of the director constitutes a separate and distinct violation of this code. [Ord. 2754 Exh. A, 6-18-12.]

13.25.240 Remediation.

If the director determines that an illicit or illegal discharge or accidental spill has resulted in degradation or harm of the stormwater system or watercourses within the city limits, it reserves the right to require remediation of the

degraded area, including watercourses, by the owner of the property or facility within a specified timeframe. [Ord. 2754 Exh. A, 6-18-12.]

Article IV. Stormwater Management

13.25.250 Purpose and intent.

A. The purpose of these regulations is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the effects associated with increased stormwater from impervious areas in the city limits by requiring affected projects to control the volume and velocity of stormwater discharged from the site.

B. The intent of these regulations is to:

1. Encourage the preservation and use of the natural topography for receiving and conveying stormwater from a site;
2. Minimize local flooding, sedimentation, and stream channel erosion;
3. Maintain optimum temperatures for native fish and riparian habitat;
4. Construct the system in accordance with the Master Plan and the Public Works Design and Construction Standards;
45. Protect stormwater facilities already existing downstream; and
56. Ensure that stormwater facilities are properly maintained with accurate records. [Ord. 2754 Exh. A, 6-18-12.]

13.25.260 Scope.

A. These requirements apply to:

1. Projects or activities that ordinarily would be exempt but are part of a larger common development plan that meets the criteria. This is true even if the activities appear to be separate and distinct and take place at different times and on different schedules;
2. Projects or activities that are exempt but have the potential to discharge stormwater to watercourses which will degrade their beneficial use or cause a violation of water quality standards set by the city's Willamette River TMDL Implementation Plan, DEQ, or the U.S. Environmental Protection Agency;
3. Projects that create a net impervious area of 500 square feet or more; or
4. Projects or activities that change the pre-project land contours such that 500 square feet or more of new drainage discharges into the stormwater system or watercourses within the city limits.

B. These requirements do not apply to:

1. Duplex and single-family residential projects on single lots that are already serviced by a properly functioning stormwater facility; or
2. Emergency measures taken to alleviate an immediate threat to the public, environment, or downstream stormwater facilities. [Ord. 2754 Exh. A, 6-18-12.]

13.25.270 Stormwater treatment.

A. Projects shall use techniques or create stormwater facilities that maintain the water quality and beneficial uses of the receiving watercourse.

B. The discharge rate and stormwater volume leaving a site shall conform with the requirements of the design standards manual and:

1. Not create or increase existing erosion or flooding problems of adjacent properties or areas downstream of the site; and
2. Maintain historic drainage properties of adjacent properties and watercourses.

C. Stormwater facilities that discharge to the city's wastewater system shall be considered an illegal discharge. [Ord. 2754 Exh. A, 6-18-12.]

13.25.280 Facility design.

A. Prior to an applicant receiving a permit for a project, the director shall determine the stormwater requirements of the project.

1. All projects which create 500 square feet or more of net impervious area that directly discharge to a watercourse or occur on properties with existing severe erosion problems may be required to provide engineered stormwater facilities that meet the requirements of this code and the design standards manual.
2. Projects disturbing one acre or more of land shall have stormwater facilities that are designed by a professional civil engineer and meet all of the requirements of this code and the design standards manual.
3. Projects disturbing less than one acre of land but creating 2,877 square feet or more of net impervious area shall provide a summary of the project, design flow calculations, and proposed methods for treating stormwater to the director for review and approval in accordance with requirements specified in the design standards manual. The submitted material shall be used by the director to determine whether the proposed stormwater facilities are subject to subsection (A)(2) of this section.
4. Projects creating 500 square feet or more of net impervious area but less than 2,877 square feet of net impervious area shall provide a project summary and a scaled drawing showing the general stormwater flow direction to the director for review and approval in accordance with the requirements specified in the design standards manual. The material shall be used by the director to determine whether stormwater facilities are required for the project and subject to subsection (A)(3) of this section.
5. Projects on properties lying partially or completely within the 100-year floodplain or the Newberg stream corridor overlay sub-district are subject to additional requirements as specified in the design standards manual.

B. All stormwater facilities, structural and nonstructural, shall have an emergency overflow or bypass that is designed to passively function and route excess floodwaters to an appropriate location that minimizes the effect of the overflow to adjacent properties. [Ord. 2754 Exh. A, 6-18-12.]

13.25.290 Facility responsibility.

A. The city shall operate and maintain public stormwater facilities.

B. Privately owned stormwater facilities shall be operated and maintained by the owner or maintenance organization.

1. The city does not accept responsibility for the design, installation, operation, or maintenance of any stormwater facility unless an agreement specifying such responsibility is executed between the city and the owner or maintenance organization.
2. Approval of stormwater facilities, a project, or a maintenance agreement does not, by itself, transfer responsibility from the owner or maintenance organization to the city.
3. Failure to properly operate or maintain private stormwater facilities shall constitute a violation of this code. [Ord. 2754 Exh. A, 6-18-12.]

13.25.300 Maintenance.

A. The applicant or maintenance organization shall enter into a maintenance agreement with the city that shall be binding on the applicant or maintenance organization and all subsequent owners of the properties served by the stormwater facilities.

B. The maintenance agreement shall be recorded in the deed records of Yamhill County, Oregon.

C. A facility operations and maintenance plan previously approved by the city shall be provided by the applicant to the maintenance organization, if different from the applicant, at project completion.

D. Privately owned stormwater facilities shall be inspected and maintained in accordance with the facility operations and maintenance plan.

E. Annual reports shall be submitted to the city by the maintenance organization attesting to the proper functioning, maintenance, and safety of the stormwater facilities.

F. Annual reports shall include current 24-hour emergency contact information. When emergency contact information changes midyear, the director shall be notified by letter within 15 business days.

G. Stormwater facilities shall remain functionally unaltered unless prior approval has been obtained from the director.

H. The director may authorize the immediate repair of any stormwater facility that poses an immediate threat to public health and safety; public or private property adjacent to or downstream of the stormwater facility; or the water quality, riparian habitat, or channel morphology of the receiving watercourse. [Ord. 2754 Exh. A, 6-18-12.]

13.25.310 Inspections.

A. Authorized city representatives may inspect stormwater facilities to determine compliance with the requirements of this code.

B. The maintenance organization shall allow authorized city representatives access to the stormwater facility for the purpose of inspection, sampling, records examination, or in the performance of any duty required to ensure compliance with this code.

C. The maintenance organization shall provide copies of records, reports, or other maintenance or operating documents requested by an authorized city representative during their inspection.

D. Entry shall be made during normal operating or business hours unless an emergency situation exists as determined by the director.

E. Authorized city representatives shall present appropriate credentials at the time of entry. If the property or facility is unoccupied, the authorized city representative shall make a reasonable effort to locate the owner or emergency contact on the maintenance agreement. [Ord. 2754 Exh. A, 6-18-12.]

13.25.320 Variances.

A. The director may grant a variance from any requirement of this chapter if there are exceptional circumstances such that strict adherence will not fulfill the intent of this code. A written request for a variance shall be provided to the director which states the specific variance sought and reasons for granting the request.

B. In a variance request, the applicant shall include design flow calculations showing the effects, if any, that the variance will have on the:

1. Adjacent property drainage patterns;
2. Local flooding, sedimentation, and stream channel erosion;
3. Beneficial uses or water quality of the receiving watercourse; and
4. Proper functioning of downstream stormwater facilities, culverts, bridges, dams, and other structures.

C. A public comment period of 30 days, requested through standard public noticing procedures, shall follow a variance request by an applicant.

D. No variance granted by the director shall be construed as providing precedence for future projects or facilities by any applicant.

E. When the director grants a variance, the applicant shall satisfy the requirements of this code through one or more of the following options as determined by the city and which are commensurate with the volume and velocity of stormwater expected by the project:

1. Upgrading improperly functioning stormwater facilities downstream of the project;
2. Providing new stormwater facilities downstream of the project; and
3. Providing the city with a conservation easement within the watershed of the receiving watercourse. [Ord. 2754 Exh. A, 6-18-12.]

Article V. Enforcement and Penalties

13.25.330 General.

A. The city may, for enforcement purposes, use any one of the following actions, a combination of them, or any other legal action depending on the severity of the violation:

1. Notice of violation;
2. Stop work order;
3. Summary abatement;
4. Refuse to issue a certificate of occupancy;
5. Modify, suspend, revoke, or withhold final approval of a city permit; or
6. Refer the issue to legal action.

B. Communication to one responsible party shall be regarded as communication to each responsible party for the purposes of this code.

C. In addition to any other sanctions, civil action or criminal prosecution may be brought against any person, company, or organization in violation of this code. [Ord. 2754 Exh. A, 6-18-12.]

13.25.340 Concealment.

Causing, permitting, aiding, abetting, or concealing a violation of any provision of these requirements shall constitute a violation of these regulations. [Ord. 2754 Exh. A, 6-18-12.]

13.25.350 Notice of violation.

A. The city may issue a notice of violation if a responsible party has violated or failed to meet a requirement of this chapter.

B. Failure to comply with a notice of violation is a separate violation of this chapter.

C. Failure to complete the actions required in the notice of violation within the deadline may result in a summary abatement action by the city. [Ord. 2754 Exh. A, 6-18-12.]

13.25.360 Stop work order.

A. The city may issue a stop work order to allow proper remedial action or to deflect an immediate threat to public health or safety or the water quality of receiving watercourses.

B. The stop work order shall list the conditions under which work may resume. The responsible party shall contact the city for an inspection when the conditions for resuming work have been fulfilled.

C. It is a violation of these regulations for any person to remove, obscure, mutilate or otherwise damage a stop work order or prevent the city from posting one. [Ord. 2754 Exh. A, 6-18-12.]

13.25.370 Summary abatement.

A. If the responsible party fails to fulfill the steps required in an enforcement action within the deadline prescribed by the city, the actions will be completed by the city and the owner shall be responsible for reimbursing the city for 150 percent of the cost of the investigation, repair, and remediation of the situation including labor, material, administrative, and legal expenses.

B. If the owner does not remit payment within 45 days of notification, the debt shall be declared as a special assessment against the property and shall constitute a lien by the city against the subject property.

C. Any relief obtained under this section shall not prevent the city from seeking other relief as allowed by law. [Ord. 2754 Exh. A, 6-18-12.]

13.25.380 Appeal procedure.

A. Any person aggrieved by a decision or action of the director under this chapter may file a written request with the city manager for reconsideration within 10 calendar days of notification of the decision or action. The request for reconsideration shall clearly describe the:

1. Decision or action being appealed including the date of the decision or action;
2. Property location;
3. Facts and arguments supporting the request for reconsideration; and
4. Specific grounds on which the appeal is filed.

B. The city manager may establish such procedures as may be deemed necessary or proper to conduct the reconsideration process and shall make a determination regarding the appeal within 10 business days of the receipt of the request for reconsideration. The filing of a request for reconsideration by the city manager shall be a condition precedent to the right to appeal to the city council. The filing of an appeal shall not stay enforcement of an action by the director in emergency situations as previously defined in this chapter.

C. Any person aggrieved by the city manager's determination under this chapter may appeal to the city council within 10 days of notification of the city manager's decision. Written notification of the appeal shall be filed with the city council and the city manager along with a payment of \$50.00. The filing of a request for reconsideration by the city council shall set forth in reasonable detail the decision or action being appealed and the facts and arguments supporting the request for reversal or modification.

D. The city council shall conduct a hearing on the appeal according to established city council procedures. The hearing shall be conducted at the earliest possible regularly scheduled city council meeting with final city council action being taken on the appeal within 60 days after its initial filing. [Ord. 2754 Exh. A, 6-18-12.]

13.25.390 Penalties.

A. General.

1. Tampering with or knowingly rendering nonfunctional any sediment or erosion control, monitoring device, or stormwater facility required under these regulations constitutes a separate and distinct violation of this code.
2. The following shall constitute a separate and distinct violation of this code:
 - a. Disregarding or interfering with a stop work order;
 - b. Failure to remediate or abate;
 - c. Failure or refusal to reimburse the city for expenses incurred as a result of summary abatement; and

d. Each day of continued violation.

3. Any relief obtained under this section shall not prevent the city from seeking other relief as allowed by law.

B. Falsifying Information.

1. Any person making false statements, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this code shall be in violation of this code.

2. In addition, the responsible party or their agent shall be subject to the provisions of 18 USC 1001 relating to fraud and false statements; and the provisions of Section 309(c) of the Clean Water Act, as amended, governing false statements, representation, or certification and responsible corporate officers.

C. Any person, firm, or corporation or any agent or employee of these entities violating the provisions of this code that pertain to federal or state law shall have committed a Class 1 civil infraction.

D. Any person, firm, or corporation or any agent or employee of these entities violating the provisions of this code that pertain to municipal law and whose violations are not deemed a nuisance shall have committed a Class 2 or Class 1 civil infraction.

E. Any person, firm, or corporation or any agent or employee of these entities violating the provisions of this code that pertain to municipal law and whose violations are deemed a nuisance shall be punishable as a civil infraction ranging from a Class 4 to a Class 2.

F. Any violation of this code shall be processed in accordance with the procedures set forth in Chapter 2.30 NMC. [Ord. 2754 Exh. A, 6-18-12.]

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 8, 2015

Order ____ No.	Ordinance ____ No.	Resolution <u>XX</u> No. 2015-3222	Motion ____	Information ____
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**SUBJECT: City Council support for a DLCD
Technical Assistance Grant for planning project
assistance**

**Contact Person (Preparer) for this
Motion: Jessica Pelz, AICP
Dept.: Community Development
File No.: GR-15-001**

RECOMMENDATION: Adopt Resolution No. 2015-3222 expressing support for staff to pursue a Technical Assistance grant application to the Department of Land Conservation and Development for long range planning project assistance.

EXECUTIVE SUMMARY: The Department of Land Conservation and Development (DLCD) provides resources to help Oregon communities prepare and update local land use plans and ordinances through a Technical Assistance grant program. Technical Assistance grants are typically used to complete needed planning requirements that are not on periodic review work programs, or to satisfy local planning needs. The Oregon Legislature approved DLCD's 2015-2017 budget, and DLCD is now inviting applications for the Technical Assistance grant program for the biennium. The priority order for Technical Assistance grant awards is as follows:

1. Promote economic development
2. Advance regulatory streamlining
3. Natural hazards planning
4. Provide infrastructure financing plans for urbanizing areas
5. Update comprehensive plans and implementing codes to respond to changes in state law.

Newberg should apply for a Technical Assistance grant to work on an updated Economic Opportunities Analysis, and potentially for an updated Housing Needs Analysis as well as part of the same project. One of Newberg's goals is to promote economic development, and one way the city can do that is by future planning so that the city is better prepared for future residents, employers, and employees. Newberg's Economic Opportunities Analysis and its Housing Needs Analysis are both outdated and in need of updating to be accurate, to reflect current conditions within the city, and to include updated future forecasts. Both documents are important pieces of supporting analysis necessary for future long range planning efforts. Receiving a Technical Assistance grant to help staff complete this work would mean that Newberg would be able to have completed documents much sooner than would otherwise be possible.

FISCAL IMPACT: The Community Development Department's 2015-2016 budget includes some funding for future planning efforts, including for work on an updated Economic Opportunities Analysis. The Technical Assistance grant application process favors applicants who can contribute matching funds. The amount of the proposed matching funds is unknown at this time, as the amount of funding necessary to complete these projects is still being analyzed. The city's matching fund contribution would not exceed what has already been budgeted for these purposes.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): A successful Technical Assistance grant application would help meet Council goal #4: Foster and encourage economic development in the community.



RESOLUTION No. 2015-3222

**A RESOLUTION SUPPORTING AN APPLICATION TO THE DEPARTMENT
OF LAND CONSERVATION AND DEVELOPMENT FOR A TECHNICAL
ASSISTANCE GRANT FOR PLANNING PROJECT ASSISTANCE**

RECITALS:

1. The Department of Land Conservation and Development (DLCD) provides resources to help Oregon communities prepare and update local land use plans and ordinances through a Technical Assistance grant program. The highest priority for Technical Assistance grant awards is for projects that promote economic development.
2. One of Newberg's goals is to promote economic development, and one way the city can do that is by future planning so that the city is better prepared for future residents, employers, and employees.
3. Newberg has an outdated Economic Opportunities Analysis and an outdated Housing Needs Analysis. Both documents are important pieces of supporting analysis necessary for future long range planning efforts.
4. Newberg should apply for a Technical Assistance grant to work on an updated Economic Opportunities Analysis, and potentially to work on an updated Housing Needs Analysis as part of the same project. Receiving a Technical Assistance grant to help staff complete this work would mean that Newberg would be able to have completed documents much sooner than would otherwise be possible.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. City Council supports an application to the Department of Land Conservation and Development for a Technical Assistance grant for planning project assistance. The targeted planning projects would include an updated Economic Opportunities Analysis and potentially an updated Housing Needs Analysis.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: September 9, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 8th day of September, 2015.

Sue Ryan, City Recorder

ATTEST by the Mayor this 10th day of September, 2015.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 8, 2015

Order ____	Ordinance ____	Resolution <u>XX</u>	Motion ____	Information ____
No.	No.	No. 2015-3226		

SUBJECT: Appointment of City Manager Pro Tem.

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

HEARING TYPE: ADMINISTRATIVE

RECOMMENDATION:

Adopt Resolution No. 2015-3226, a resolution appointing Stephen A. Rhodes as City Manager Pro Tem.

EXECUTIVE SUMMARY:

Terrence D. Mahr has fulfilled the position of City Manager Pro Tem and desires to return to retirement. Per Mr. Mahr's appointment, he agreed to act in this capacity on a short term basis approximately one to two months.

The council subcommittee met September 2, 2015 at noon to consider their recommendations for the City Manager Pro Tem position. The subcommittee intended to interview three finalists, but interviewed two after the third withdrew his name from consideration.

The subcommittee is recommending Stephen A. Rhodes for the position. Mr. Rhodes brings more than 35 years' experience in local government. He is committed to working with staff, assisting where needed, devoting full-time to the position and being available.

FISCAL IMPACT:

This position is within the budgeted amount for city manager.

STRATEGIC ASSESSMENT (Relevancy to Council Goals):

None.



RESOLUTION No. 2015-3226

A RESOLUTION APPOINTING STEPHEN A. RHODES AS CITY MANAGER PRO TEM

RECITALS:

1. The Newberg City Charter provides under Chapter VIII, Section 34 (h) that when the City Manager is temporarily disabled from acting as manager or when the office of City Manager becomes vacant, the Council must appoint a manager pro tem.
2. Terrence D. Mahr has worked as City Manager Pro Tem during a short interim basis and desires to return to retirement upon hiring the next city manager pro tem.
3. The City Council now wishes to appoint Stephen A. Rhodes as City Manager Pro Tem.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council hereby appoints Stephen A. Rhodes as City Manager Pro Tem according to the terms below. Such appointment shall be effective September ___, 2015.
2. The Mayor and City Attorney are authorized to negotiate an employment contract to effectuate this resolution.
3. The Mayor is authorized to execute the employment contract, subject to City Attorney approval as to form and content.

➤ **EFFECTIVE DATE** of this resolution is the day of the adoption date, which is: September 8, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 8th day of September 2015.

Sue Ryan, City Recorder

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

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

Date of Council Meeting: September 8, 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.

The Council Forward Looking Calendar is attached.

The city of Newberg is seeking applications from citizens 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 the September 21, 2015 City Council meeting. Applications are available on the city's website at <https://www.newbergoregon.gov/citycouncil/serve-city-committee-or-commission> or from the City Recorder's Office at city hall (414 E. 1st Street) and submitted via mail, email, or in person by September 15, 2015.

Affordable Housing Commission – 2 vacancies open now with varied terms

The City of Newberg is seeking applicants to serve on a Newberg Affordable Housing Commission.

Citizens' Rate Review Committee – 2 vacancies open now with 3 year terms

The CRRC is comprised of eight appointed citizens to review, analyze, and discuss rates necessary to operate the City's utility funds efficiently. The committee meets bi-annually with the next set of meetings to begin in October 2015 to discuss the utility rates and as needed with special projects. The CRRC makes their recommendations to the City Council. This is an important role for the finances of the City. Applicant requirements include: Residency within the City limits, be a City of Newberg utility customer.

FISCAL IMPACT: None.

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

NEWBERG CITY COUNCIL 2015 FORWARD LOOKING CALENDAR

Monday, September 21, 2015

Street Preservation – Work Session on potential funding options
Inflow & Infiltration Update – Work Session on private lateral discussion
Committee appoints: Affordable Housing Commission, Citizens Rate Review Committee
Resolution to Initiate a Comprehensive Plan Amendment for the Transportation System Plan update
Resolution 3206 Springs Divestiture consideration
2nd reading of Ordinance 2782 – (Code amendment on temporary & portable signs)
2nd reading of Ordinance 2784 - (Newberg Municipal Code Chapter 13 contracting & design standards)
Placeholder for possible Medical and Recreational Marijuana actions

Monday, September 28, 2015

Joint Meeting with Planning Commission on Transportation System Plan

Monday, October 5, 2015

Quasi-Judicial Process Work Session
Classification and Compensation Study – Executive Session
Ordinance on Comprehensive Plan Amendment for Population and Employment Numbers
Ordinance on Urban Growth Boundary repeal
Resolution to initiate street vacation for Cherry Street
Resolution to adopt Classification and Compensation

Monday, October 19, 2015

Library Strategic Plan presentation
America's Best Communities application and Economic Development Strategic Plan presentation
Resolution to Adopt Library Plan
2nd reading on Ordinance on Comprehensive Plan Amendment for Population and Employment Numbers
2nd reading on Ordinance on Urban Growth Boundary repeal

Monday, November 2, 2015

Fire & EMS Update
Public Hearing on Ordinance for Cherry Street Vacation