



**CITY COUNCIL AGENDA
FEBRUARY 1, 2016, 7:00 PM
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

Mission Statement

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

Vision Statement

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

I. CALL MEETING TO ORDER

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. CITY MANAGER'S REPORT

V. PUBLIC COMMENTS

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

VI. CONSENT CALENDAR

1. Resolution 2016-3256, A Resolution authorizing to accept staff's evaluation of the alternative contracting method used for the Waste Water Treatment Plant Repair, Renovation and Expansion Project Pages 1-9
2. Approval of Oregon Liquor Control Commission limited on-premises sales Permit for Bert's Chuckwagon Page 10

VII. PUBLIC HEARING – LEGISLATIVE

1. Ordinance 2016-2793, An Ordinance amending the Newberg Development Code regarding Medical Marijuana Grow Sites, Processors and Dispensaries; and declaring an emergency Pages 11-34

Agenda continued on next page

VIII. NEW BUSINESS

1. Resolution 2016-3253, A Resolution initiating an amendment to the Newberg Municipal Code, Title 15 Development Code for Place, Time and Manner regulations for Recreational Marijuana wholesalers, Laboratories, research certificates and retailers Pages 35-38

2. Resolution 2016-3242, A Resolution to authorize the Mayor and City Manager Pro Tem to finalize and execute a Cooperative Improvement Agreement (No. 28658) with the Oregon Department of Transportation for the Oregon Route 18: Newberg-Dundee Bypass – Phase 1 Page 39

IX. COUNCIL BUSINESS

1. Information on Council Calendar Pages 40-41

X. ADJOURNMENT

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

Council accepts comments on agenda items during the meeting. Fill out a form identifying the item you wish to speak on prior to the agenda item beginning and turn it into the City Recorder. 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: February 1, 2016

Order ___ No.	Ordinance ___ No.	Resolution <u>XX</u> No. 2016-3256	Motion ___	Information ___
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SUBJECT: A resolution to accept staff's evaluation of the alternative contracting method used for the Waste Water Treatment Plant Repair, Renovation and Expansion Project.

**Contact Person (Preparer) for this Motion: Jason Wuertz, Project Manager
Kaaren Hofmann, City Engineer**

Dept.: Public Works Department - Engineering

RECOMMENDATION:

Adopt Resolution No. 2016-3256.

EXECUTIVE SUMMARY:

The City of Newberg recently completed the final phase of a large, multi-phased upgrade project at the waste water treatment plant. This project was completed using an alternate contracting method, Construction Manager / General Contractor (CM/GC). Per the Oregon Revised Statutes (ORS), section 279C.355, this report evaluates the project as an alternate contracting method project.

ORS 279C.355 Evaluation of public improvement projects not contracted by competitive bidding. (1) Upon completion of and final payment for any public improvement contract, or class of public improvement contracts, in excess of \$100,000 for which the contracting agency did not use the competitive bidding process, the contracting agency shall prepare and deliver to the Director of the Oregon Department of Administrative Services, the local contract review board or, for public improvement contracts described in ORS 279A.050 (3)(b), the Director of Transportation an evaluation of the public improvement contract or the class of public improvement contracts.

- (2) The evaluation must include but is not limited to the following matters:*
 - (a) The actual project cost as compared with original project estimates;*
 - (b) The amount of any guaranteed maximum price;*
 - (c) The number of project change orders issued by the contracting agency;*
 - (d) A narrative description of successes and failures during the design, engineering and construction of the project; and*
 - (e) An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.*

FISCAL IMPACT:

This resolution has no fiscal impact.

STRATEGIC ASSESSMENT:

The post construction evaluation report is a requirement of ORS 279C.355. Acceptance of this resolution satisfies the statutory requirements of the alternate contracting method.



RESOLUTION No. 2016-3256

A RESOLUTION AUTHORIZING TO ACCEPT STAFF’S EVALUATION OF THE ALTERNATIVE CONTRACTING METHOD USED FOR THE WASTE WATER TREATMENT PLANT REPAIR, RENOVATION AND EXPANSION PROJECT.

RECITALS:

1. Through resolution No. 2009-2870, the City Council adopted the findings for exemption from local contract review board rules for the repairs and improvements to the wastewater treatment plant.
2. Per ORS 279C.355, the report shown in Exhibit “A” is an evaluation of the public improvement project which evaluates the use of the alternative contracting method.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

City Council hereby accepts staff’s evaluation, shown as exhibit “A,” of the alternative contracting method used for the waste water treatment plant repair, renovation and expansion project. Exhibit “A” is hereby adopted and by this reference incorporated.

- **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 2, 2016

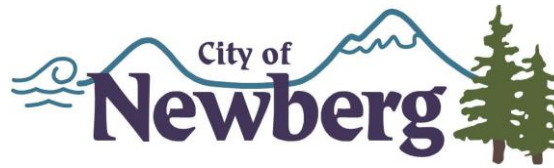
ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of February 2016.

Sue Ryan, City Recorder

ATTEST by the Mayor this 3rd day of February 2016.

Bob Andrews, Mayor

Newberg City Hall
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www.newbergoregon.gov



City Engineer's Office
Tel: 503.537.1273

ENGINEERING SERVICES DEPARTMENT

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PUBLIC IMPROVEMENT CONTRACT EVALUATION

Wastewater Treatment Plant Repair, Renovation and Expansion Project



"Working Together for a Better Community – Serious About Service"

PUBLIC IMPROVEMENT CONTRACT EVALUATION Final

Overview

The City of Newberg recently completed the final phase of a large, multi-phased upgrade project at the waste water treatment plant. This project was completed using an alternate contracting method, Construction Manager / General Contractor (CM/GC). Per the Oregon Revised Statutes (ORS), section 279C.355, this report evaluates the project as a result of using an alternate contracting method.

ORS 279C.355 Evaluation of public improvement projects not contracted by competitive bidding. (1) Upon completion of and final payment for any public improvement contract, or class of public improvement contracts, in excess of \$100,000 for which the contracting agency did not use the competitive bidding process, the contracting agency shall prepare and deliver to the Director of the Oregon Department of Administrative Services, the local contract review board or, for public improvement contracts described in ORS 279A.050 (3)(b), the Director of Transportation an evaluation of the public improvement contract or the class of public improvement contracts.

(2) The evaluation must include but is not limited to the following matters:

- (a) The actual project cost as compared with original project estimates;
- (b) The amount of any guaranteed maximum price;
- (c) The number of project change orders issued by the contracting agency;
- (d) A narrative description of successes and failures during the design, engineering and construction of the project; and
- (e) An objective assessment of the use of the alternative contracting process as compared to the findings required by ORS 279C.335.

Project Description

The City of Newberg (City), Oregon owns and operates the Newberg Wastewater Treatment Plant (WWTP), located at 2301 Wynooski Road. Originally placed into service in 1987, the plant facilities were in need of repair, restoration, and expansion (RRE) to meet the year 2030 projected growth. The following areas were identified as focal points in the improvement plan: the Influent Pump Station, Headworks Facility, Oxidation Ditches, Disinfection System, Sludge Dewatering, and Site Improvements. These improvements fit within the recommendations of the 2007 Facilities Plan Update (FPU) approved by the

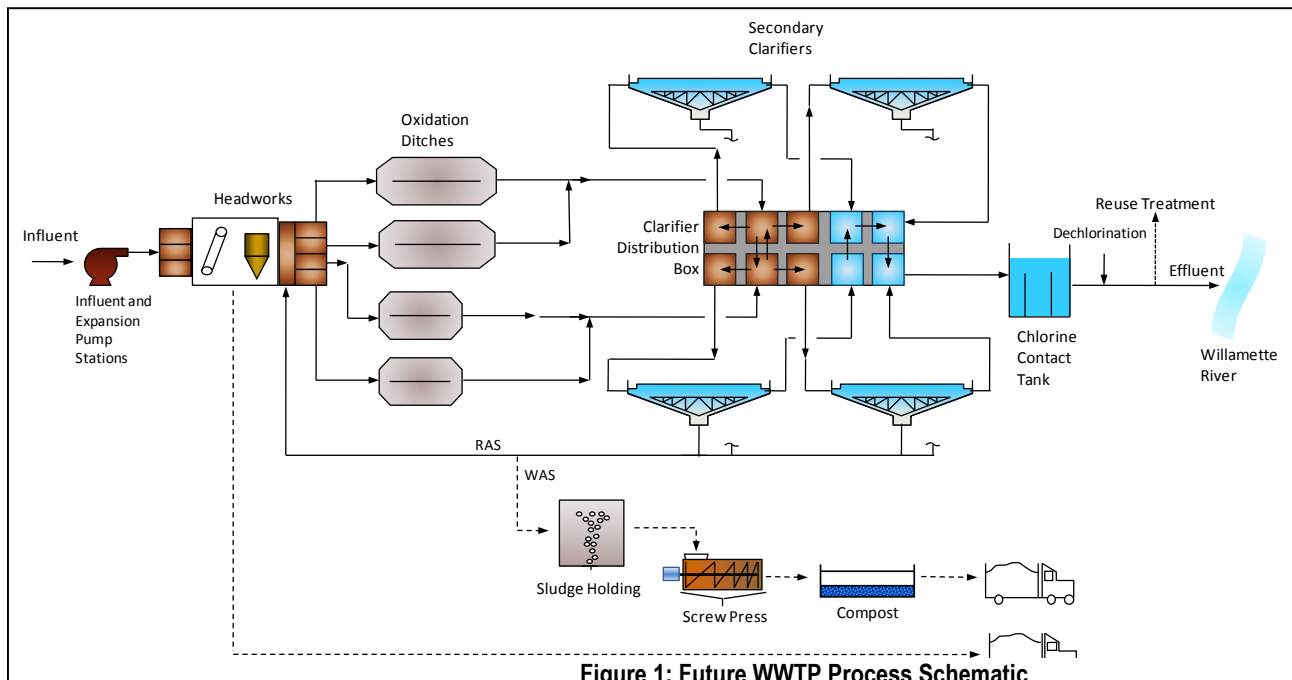


Figure 1: Future WWTP Process Schematic

Oregon Department of Environmental Quality (DEQ), the discharge permitting agency, in 2009. The Newberg WWTP process flow schematic is presented in Figure 1 above:

Project Finances

The original project budget, including design and construction was \$55M. The total spent on both design and construction, at the end of this final phase was just over \$25M. Portions of the upgrade project, such as improvements to the dechlorinating system and new oxidation ditches, were not completed with the large CMGC project due to funding limitations. The plan is to complete the future projects utilizing cash funding (rates and system development charges), if possible, rather than utilizing debt financing. Throughout the project, there were no contract change orders which increased the total value of any guaranteed maximum price (GMP)

To accommodate funding availability, the project was designed and constructed in two separate phases. The Improvements for each of these phases, and associated GMP contracts are as follows:

Phase 1:

Secondary Clarifiers – \$4,425,521 GMP

Oxidation Ditch Repairs – \$226,198 GMP

Phase 2:

Influent Pump Station Road –
\$450,358 GMP

Influent Pump Station Expansion,
Headworks, Dewatering, Septage Receiving,
Site Improvements - \$15,516,327 GMP

Construction Schedule, Management, and Control Techniques Used

Utilizing the CM/GC method for construction allowed the site works contractor, Mortenson

Construction, to be involved with project design at an early stage of development. The early involvement of the project team, Mortenson, City, and HDR (Engineer), made coordination of schedule and management of the project more effective. Weekly coordination meetings to review design and schedule created many opportunities to save money and plan work effectively. Multiple value engineering sessions were conducted to analyze the design and identify opportunities to attain cost savings on the scale of millions of dollars.

Safety Performance



There have been over 70,000 man-hours over the course of 4 years and the project achieved zero lost-time injuries and zero first aid events.

This accomplishment was a result of careful planning and creating a positive safety culture through implementation of Mortenson's Zero Injury program. Zero injuries would not have been possible unless there was 100% commitment to creating a safe job site from everyone who was part of the construction.

Collaboration Benefits

As a result of the combined efforts of the team, the project was completed under budget, even after significant added work was completed as well. This considerable cost savings effectively maximized the potential of the City's budget and left the plant with significantly more upgrades than originally contracted.

Early involvement of the contractor was a large contributing factor that led to significant cost savings. The following are a portion of the cost saving benefits:

- During a value engineering session early in the design phase, it was proposed to place the new influent pump station (IPS) near the existing influent pump station instead of along Wynooski road as originally proposed. This design change removed the need for directional boring, which saved the city upwards of one million dollars.
- Careful planning during the construction process was another area where significant savings were achieved. An example of this was leaving the electrical cabinet for the existing IPS in place during the sheet pile process, rather than relocating it. There were concerns that the vibrations from the sheet pile driving process would damage the existing equipment and walls of the existing pump station because of the close proximity. It was proposed to conduct settlement monitoring twice daily in addition to having an electrician monitoring the cabinet full time.
- Rather than removing the sheet piles at the IPS site after the work was completed, it was proposed to abandon them in place. This removed significant vibrations that would have been created in the process of removal and helped justify leaving the electrical cabinet in place and protect the existing walls of the pump station.



Figure 2: Underground Piping

- The avoidance of by-pass sewer pumping between the existing and new IPS was achieved through close collaboration of the entire project team including subcontractors of the general contractor, providing significant costs savings.
- Originally the screw press manufacturer was supposed to be on site during installation because the equipment would need to be dis-assembled in order to fit into the existing building. Through careful review between Mortenson and Lynch Mechanical, a plan was developed to roll the equipment through the existing doors on carts with only a few inches of clearance in all directions. Existing structures were analyzed by HDR to confirm that the exterior elevated slab could support the full weight of the equipment. This adjustment in workflow saved the project time and money and was completed with no issues.



Figure 3: Screw Presses Installed

- Adjustments in the startup process provided cost and schedule savings. The screens of the existing headworks were reused in the new headworks as they were fairly new and in good condition. Refurbishment of the existing headworks screens was completed in place during operations of the existing headworks rather than during relocation to the new Headworks. This completed some of the startup process early and gave the opportunity to test the refurbished screens early and ensure that everything worked.

The removal of test valves in the raw sewage lines was another area of cost and schedule savings. The startup process was broken into two independent portions and coordinated in a way that avoided the need for the installation of expensive 20" valves on the raw sewage lines that run from the influent pump station to the headworks building. These startup adjustments were the biggest contributor to completing the project three months ahead of schedule.

- Early site exploration through potholing saved time in the schedule associated with the installation of a 30" raw sewage pipe from the Influent Pump Station to the Headworks building.
- Examination of the plant's electrical building allowed for reconfiguration of existing equipment to make room for the new equipment that needed to be installed, eliminating the need for an additional electrical building.

All of the above are examples of how Mortenson, HDR and the City/plant staff worked together to plan the project and make adjustments that would ultimately save the City of Newberg money and deliver the project ahead of schedule. Cost savings were significant enough to allow for added work which includes the following:

- Frontage Improvements: Added paved area for compost, continuous roadside sidewalk along Wynooski, slurry seal asphalt maintenance over the entire plant site.
- RV Dump: Located outside site fence for 24 hour access.
- Septage Receiving: A new station was installed with an automated payment mechanism for commercial trucks to dump waste.
- Misc. Improvements: New gutters at Chlorine Contact Basins, catwalk over Chlorine Contact Basins and around

screw presses, added parking/laydown around new influent pump station.

- Plant Control Panel: Significant cleanup of all wiring in plant control panel at operations building.

Even after completing all of the added work listed above, the City did not fully spent the original budget. Constant communication and teamwork between all parties and the use of the CM/GC approach helped achieve these savings, and delivered the City of Newberg



Figure 4: Septage Receiving & RV Dump Station expanded capacity and increased functionality at the wastewater treatment plant.

Construction Phasing

The nature of this project brought on challenging conditions that the project team had to work through together to properly handle. The plant was required to be fully operational during the entirety of the project, which caused the necessity to work around raw sewage. This added another level of complexity to the startup process and required creativity in determining startup of new equipment around raw sewage. Furthermore, these new systems needed to interact with existing systems that were sometimes 30+ years old.

To combat these adverse conditions, the team came up with the idea of dividing the existing operational systems so that the plant could operate partially on the old system, and the new system. This provided additional

redundancy and securities to avoid plant flow interruptions and potential permit violations.

The project was completed with zero permit violation.

Assessment of Findings of Fact:

As part of the decision to use an alternate contracting method, City Council approved 'findings of fact' justifying the use of the CM/GC contracting method. The following is an assessment of the project in relation to the findings originally presented to the Council.

Finding 1 - Design, construction and integration of new facilities into an existing and fully operational wastewater treatment plant requires a contractor experienced in similar projects that can work around the hazards, and operational constraints associated with modifications to wastewater treatment plant.

The level of expertise required for this project would not have adequately been able to be evaluated in a tradition sealed bid process. The RFP process used allowed the City to choose the most qualified contractor for the CM/GC project.

Finding 2 - The phasing and staging of this project combined with the funding plan and duration of construction, make this a unique project that requires a contractor that can come in early and help the City develop and phase the work. The complexity of the project and the attendant need for close coordination during the project by required project participants will be best addressed through the use of the CM/GC contracting process. Optimal value for the City is to have the CM/GC participate early in the design process so that the design team can integrate ideas and methods into the design process.

The early involvement of the contractor in the design of the improvements proved to be extremely valuable in all aspects of the project

as outlined in other parts of this report. Specifically, contractor input allowed for better cost control and estimating, scheduling, and design changes which reduced in either a process improvements or a construction cost savings.

Finding 3 - Use of the CM/GC process is expected to accelerate the project schedule compared to a traditional procurement approach.

Scheduling of the construction projects were accelerated throughout the different phases because early work packages were able to be released for construction ahead of the entire construction package. This allowed the contractor to begin construction on early work items while the design for the larger project was being completed, accelerating the schedule.

Finding 4 - The RFP process will promote fair and unbiased competition among CM/GC firms. The RFP process allows the City to select the firm and its team members that are best-suited for the project based on factors such as experience, ability to respond to the technical complexity or unique character of the project, value engineering ideas, schedule enhancement, past performance, price and other factors specific to the project. Selection of the best proposal received via the RFP process will be based on a team review of weighted evaluation criteria.

The evaluation process was fair and complete. The contractor that the City selected was well qualified and there were no protests by other contractors.

Finding 5 - The RFP will be publicly advertised to ensure an open and competitive process. Because in addition all major components of the project will be competitively solicited, the suggested process will not encourage favoritism in the awarding of public improvement contracts or

substantially diminish competition for public improvement contracts.

As part of each Guaranteed Maximum Price (GMP), a large portion of the work was competitively bid by subcontractors of Mortenson. The City oversaw the bidding process and the result was that the majority of the work done was completed by competitively bid subcontracts.

Finding 6 - Participation of the contractor in the design of the plant improvements, as provided in the CM/GC process, will more easily allow the incorporation of quality materials and equipment, selected on performance and life-cycle cost rather than the lowest initial price.

This process allowed for the discussion of materials and equipment selection and did allow the City to specify products, or types of products that would best serve the City's needs rather than just be the lowest cost

Finding 7 – The CM/GC will make value engineering recommendations during the design process that will save costs in the overall construction of the Plant.

Informal and formal value engineering activities regularly occurred during the design and construction of the project. These activities resulted in cost saving measures and/or added value to the project.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 1, 2016

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

SUBJECT: Recommendation for Approval of an Oregon Liquor Control Commission (OLCC) Limited On-Premises Sales Permit for Berts Chuckwagon

Contact Person (Preparer) for this Motion: Chris Bolek
Dept.: Police
File No.:

RECOMMENDATION:

Recommend to the Oregon Liquor Control Commission (OLCC) that they approve a Limited On-Premises Sales permit for Berts Chuckwagon.

EXECUTIVE SUMMARY:

Berts Chuckwagon is a recently opened local business in the Newberg Community.

A local records check and that of the state criminal data base reveals no issues or concerns of any sort. The police department has no indications of poor business practices or law violations at the establishment.

The Limited On-Premises Sales permit of alcohol from OLCC allows only on site sales and consumption of beer, wine and ciders. Berts Chuckwagon also sells other hot and cold non-alcoholic beverages and varying food items.

There is no indication that Berts Chuckwagon management will not responsibly handle this new feature for their customers and insure that their staff maintains all of the necessary requirements and responsibilities associated with such a permit.

FISCAL IMPACT:

None

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

Non

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 1, 2016

Order ___	Ordinance <u>XX</u>	Resolution ___	Motion ___	Information ___
No.	No. 2016-2793	No.		

SUBJECT: An ordinance amending the Newberg Development Code regarding medical marijuana grow sites, processors and dispensaries; and declaring an emergency

**Contact Person (Preparer) for this Motion: Doug Rux, Director
Dept.: Community Development
File No.: DCA-15-002**

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

RECOMMENDATION:

Adopt Ordinance No. 2016-2793 amending the Newberg Development Code for medical marijuana grow sites, processors and dispensaries.

EXECUTIVE SUMMARY:

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

- Add Medical Marijuana Grow Sites allowing up to twelve mature plants as a permitted use in the R-1, R-2 and R-3 districts, indoor operations only. Medical Marijuana Grow Sites would be allowed as a conditional use in all other districts and subdistricts.
- Add Medical Marijuana Processors as an industrial use in all industrial districts and subdistricts (M-1, M-2, M-3, M-4, AI, SD/E, M-1/SP).
- Add definitions for Medical Marijuana Grow Sites and Medical Marijuana Processor.
- Modifies a footnote for Medical Marijuana Dispensaries deleting the reference to “Career School” and modifying reference to public or private primary, elementary, secondary schools to align with definitions in HB 3400.
- Adds a footnote for electrical inspections for grow sites as a permitted use in R-1, R-2 and R-3 districts.

B. BACKGROUND:

On March 19, 2014, Senate Bill (SB) 1531 was signed into law. SB 1531 gives local governments the ability to impose certain regulations and restrictions on the operation of medical marijuana dispensaries, including the ability to impose a moratorium for a period of time up until May 1, 2015. The city adopted a moratorium on April 7, 2014 by passage of Ordinance No. 2014-2772. On February 2, 2015, the Newberg City Council initiated a potential amendment to Newberg's Development Code regarding medical marijuana dispensaries.

The Oregon Legislature enacted four bills during the 2015 legislative session related to the Oregon

Medical Marijuana Act and Measure 91. House Bill (HB) 3400 was the omnibus bill covering recreational marijuana and modifications to the medical marijuana program. HB 2014 was enacted addressing taxes on the sale of recreational marijuana, SB 460 related to limited retail sales of marijuana from medical marijuana dispensaries and SB 844 enacted a task force on researching the medical and public health properties of cannabis. In addition to the enacting of the four bills the Oregon Liquor Control Commission adopted temporary Oregon Administrative Rules (OAR's) on October 22, 2015 that were subsequently modified on November 20, 2015 for recreational marijuana under Chapter 845, Division 25 and the Oregon Health Authority adopted temporary OAR's on September 22, 2015 for revisions to the medical marijuana program under Chapter 333, Division 8.

On April 6, 2015 the Newberg City Council passed Ordinance No. 2015-2780 regulating the time, place and manner for medical marijuana dispensaries within the city.

On September 8, 2015 the Newberg City Council was provided background information on medical and recreational marijuana at its Work Session. At the City Council Business Session on September 8th they established the Marijuana Subcommittee (Subcommittee) comprised of Councilors Rourke, Bacon and McKinney along with non-voting member Mayor Andrews. The City Council also directed staff to bring back an ordinance with a ban of the sale of recreational marijuana from Medical Marijuana Dispensaries.

On September 21, 2015 the Newberg City Council passed ordinance 2015-2787 declaring a ban on the early sale of recreational marijuana by medical marijuana dispensaries and declaring an emergency.

The Subcommittee met on November 19, 2015 to review the similarities and differences between the medical marijuana and recreational marijuana programs. The Subcommittee was briefed that the operational date for the medical marijuana modifications in HB 3400 was March 1, 2016. The Subcommittee was also provided a timeline of dates and activities that would need to occur to prepare place, time and manner land use regulations for medical marijuana grow sites and processors. The Subcommittee subsequently passed a motion 3-0 directing staff to create a Request for Council Action (RCA) to initiate the Development Code Amendment for medical marijuana grow site and processor regulations to bring forward for Council consideration on December 7.

The City Council adopted Resolution No. 2015-3244 on December 7, 2015 initiating the Development Code amendment process (Attachment 1).

The Subcommittee met again on December 9, 2015 and developed recommendations on Medical Marijuana Grow Sites, Processors and modifications to text in footnote (35) related to Medical Marijuana Dispensaries in the Zoning Use Table.

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. 12/7/15: The Newberg City Council initiated the Development Code amendment.
2. 1/14/16: After proper notice, the Planning Commission held a legislative hearing to consider the item, took public comment, and approved

Resolution 2016-312.

3. 2/1/16: After proper notice, the City Council held a legislative hearing to consider the item.

D. PUBLIC COMMENTS: As of the writing of this report, the city has received no comments on the application. If the city receives additional written comments by the comment deadline, Planning staff will forward them to the City Council.

E. ANALYSIS:

Place, Time and Manner: Medical Marijuana Grow Sites and Processors have certain limitations per ORS 475.300 – 342, OAR 333-008 and HB 3400. HB 3400 states (bracketed and italicized text is deleted and bold text is new).

SECTION 89. Section 2, chapter 79, Oregon Laws 2014, is amended to read:

Sec. 2. *[Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, “reasonable regulations” includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.]*

(1) For purposes of this section, “reasonable regulations” includes:

(a) Reasonable limitations on the hours during which the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may operate;

(b) Reasonable conditions on the manner in which a marijuana processing site or medical marijuana dispensary may transfer usable marijuana, medical cannabinoid products, cannabinoid concentrates, cannabinoid extracts, immature marijuana plants and seeds;

(c) Reasonable requirements related to the public’s access to the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary;

(d) Reasonable limitations on where the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site or a medical marijuana dispensary may be located.

(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of marijuana grow sites of persons designated to produce marijuana by registry identification cardholders, marijuana processing sites and medical marijuana dispensaries that are located in the area subject to the jurisdiction of the city or county.

PLACE

HB 3400 establishes limits on the number of mature plants that may be grown. The law reads as follows (bracketed and italicized text is deleted and bold text is new). Yellow highlighted text is applicable to grow sites.

(Grow Site Possession Limits)

SECTION 82. ORS 475.320 is amended to read:

475.320. *[(1)(a) A registry identification cardholder or the designated primary caregiver of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.]*
[(b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has been convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, the registry identification cardholder or the designated primary caregiver of the cardholder may possess one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.]
[(2) A person authorized under ORS 475.304 to produce marijuana at a marijuana grow site:]
[(a) May produce marijuana for and provide marijuana:]
[(A) To a registry identification cardholder or a cardholder's designated primary caregiver as authorized under this section; or]
[(B) If the marijuana is usable marijuana or an immature marijuana plant and the registry identification cardholder authorizes the person responsible for the marijuana grow site to transfer the usable marijuana or immature marijuana plant to a medical marijuana facility registered under ORS475.314, to the medical marijuana facility.]
[(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each cardholder or caregiver for whom marijuana is being produced.]
[(c) May produce marijuana for no more than four registry identification cardholders or designated primary caregivers concurrently.]
[(d) Must obtain and display a marijuana grow site registration card issued under ORS 475.304 for each registry identification cardholder or designated primary caregiver for whom marijuana is being produced.]
[(e) Must provide all marijuana produced for a registry identification cardholder or designated primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.]
[(f) Must return the marijuana grow site registration card to the registry identification cardholder to whom the card was issued when requested to do so by the cardholder or when the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.]
[(3) Except as provided in subsections (1) and (2) of this section, a registry identification cardholder, the designated primary caregiver of the cardholder and the person responsible for a marijuana grow site producing marijuana for the registry identification cardholder may possess a combined total of up to six mature plants and 24 ounces of usable marijuana for that registry identification cardholder.]
[(4)(a) A registry identification cardholder and the designated primary caregiver of the cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule of the Oregon Health Authority.]
[(b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or starts as defined by rule of the authority for each registry identification cardholder for whom the person responsible for the marijuana grow site is producing marijuana.]

(1) Subject to subsection (2) of this section, a registry identification cardholder and the designated primary caregiver of the registry identification cardholder may jointly possess six or fewer mature marijuana plants.

(2)(a) A person may be designated to produce marijuana under ORS 475.304 by no more than four registry identification cardholders.

(b) A person who is designated to produce marijuana by a registry identification cardholder may produce no more than six mature marijuana plants per registry identification cardholder.

(3) If the address of a person responsible for a marijuana grow site under ORS 475.304 is located within city limits in an area zoned for residential use:

(a) Except as provided in paragraph (b) of this subsection, no more than 12 mature marijuana plants may be produced at the address; or

(b) Subject to subsection (5) of this section, if each person responsible for a marijuana grow site located at the address first registered with the Oregon Health Authority under ORS 475.304 before January 1, 2015, no more than the amount of mature marijuana plants located at that address on December 31, 2014, in excess of 12 mature marijuana plants, not to exceed 24 mature marijuana plants, may be produced at the address.

(4) If the address of a person responsible for a marijuana grow site under ORS 475.304 is located in an area other than an area described in subsection (3) of this section:

(a) Except as provided in paragraph (b) of this subsection, no more than 48 mature marijuana plants may be produced at the address; or

(b) Subject to subsections (5) and (6) of this section, if each person responsible for a marijuana grow site located at the address first registered with the authority under ORS 475.304 before January 1, 2015, no more than the amount of mature marijuana plants located at that address on December 31, 2014, in excess of 48 mature marijuana plants, not to exceed 96 mature marijuana plants, may be produced at the address.

(5) If the authority suspends or revokes the registration of a person responsible for a marijuana grow site that is located at an address described in subsection (3)(b) or (4)(b) of this section:

(a) No more than 12 mature marijuana plants may be subsequently produced at any address described in subsection (3) of this section at which the person responsible for that marijuana grow site produces marijuana.

(b) No more than 48 mature marijuana plants may be subsequently produced at any address described in subsection (4) of this section at which the person responsible for that marijuana grow site produces marijuana.

(6) If a registry identification cardholder who designated a person to produce marijuana for the registry identification cardholder pursuant to ORS 475.304 terminates the designation, the person responsible for the marijuana grow site whose designation has been terminated may not be designated to produce marijuana by another registry identification cardholder, except that the person may be designated by another registry identification cardholder if no more than 48 mature marijuana plants are produced at the address for the marijuana grow site at which the person produces marijuana.

(7) If a law enforcement officer determines that a registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site under ORS 475.304 who grows marijuana for a registry identification cardholder, possesses a number of mature marijuana plants in excess of the quantities specified in this section, the law enforcement officer may confiscate only the excess number of mature marijuana plants.

SECTION 82a. (1) Except as provided in subsection (2) of this section, a registry identification cardholder and the designated primary caregiver of the registry identification cardholder may jointly possess no more than 24 ounces of usable marijuana.

(2) Subject to subsection (3) of this section, a person designated to produce marijuana by a registry identification cardholder may possess the amount of usable marijuana that the person harvests from the person's mature marijuana plants, provided that the person may not possess usable marijuana in excess of the amount of usable marijuana in the person's possession as reported to the Oregon Health Authority under section 81a of this 2015 Act.

(3) A person designated to produce marijuana by a registry identification cardholder may not possess usable marijuana in excess of:

- (a) For a marijuana grow site located outdoors, 12 pounds of usable marijuana per mature marijuana plant; or**
- (b) For a marijuana grow site located indoors, six pounds of usable marijuana per mature marijuana plant.**

SECTION 82b. The amendments to ORS 475.320 by section 82 of this 2015 Act apply to persons who registered with the Oregon Health Authority under ORS 475.304 before, on or after the operative date specified in section 179 of this 2015 Act.

HB 3400 contains language on medical marijuana processing sites. At this time staff has not identified any OAR language regarding medical marijuana processing sites. The Planning Commission may want to include in their discussion the limitation on processing locations noted in HB 3400. Yellow highlighted text is applicable to processor locations.

(Medical Marijuana Processors)

SECTION 85. (1)(a) The Oregon Health Authority shall establish by rule a marijuana processing site registration system to track and regulate the processing of marijuana by a person responsible for a marijuana processing site.

(b) Except as provided in paragraph (c) of this subsection, a person may not process marijuana unless the person is registered under this section.

(c) Paragraph (b) of this subsection does not apply to the processing of marijuana as provided in sections 3 to 70, chapter 1, Oregon Laws 2015, or as otherwise provided for by the statutory laws of this state.

(2) The registration system established under subsection (1) of this section must require an applicant for a marijuana processing site to submit an application to the authority that includes:

- (a) The name of the individual who owns the marijuana processing site or, if a business entity owns the marijuana processing site, the name of each individual who has a financial interest in the marijuana processing site;**
- (b) The name of the individual or individuals responsible for the marijuana processing site, if different from the name of the individual who owns the marijuana processing site;**
- (c) The address of the marijuana processing site;**
- (d) Proof, until January 1, 2020, that each individual responsible for the marijuana processing site has been a resident of this state for two or more years, and proof that each individual responsible for the marijuana processing site is 21 years of age or older;**
- (e) Documentation, as required by the authority by rule, that demonstrates the marijuana processing site meets the requirements of subsection (3) of this section; and**
- (f) Any other information that the authority considers necessary.**

(3) To qualify for registration under this section, a marijuana processing site:

- (a) May not be located in an area that is zoned for residential use if the marijuana processing site processes cannabinoid extracts;**
- (b) Must be registered as a business, or have filed an application to register as a business, with the office of the Secretary of State; and**
- (c) Must meet the requirements of any rule adopted by the authority under subsection (10) of this section.**

(4)(a) The authority shall conduct a criminal records check under ORS 181.534 for each individual named in an application under subsection (2) of this section.

- (b) An individual convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not own or be responsible for a marijuana processing site for two years from the date the individual is convicted.
- (c) An individual convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not own or be responsible for a marijuana processing site.
- (5) If a person submits the application required under subsection (2) of this section, if the marijuana processing site identified in the application meets the requirements of this section and any rules adopted under this section and if each individual named in the application passes the criminal records check required under subsection (4) of this section, the authority shall register the marijuana processing site and issue proof of registration. Proof of registration must be displayed on the premises of the marijuana processing site at all times.
- (6) A marijuana processing site that is registered under this section is not required to register with the State Board of Pharmacy under ORS 475.125.
- (7) The individual or individuals responsible for a marijuana processing site shall maintain documentation of each transfer of usable marijuana, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts.
- (8) The authority may inspect:
- (a) The premises of a proposed marijuana processing site or a registered marijuana processing site to ensure compliance with this section and sections 85a and 85b of this 2015 Act and any rules adopted under this section and sections 85a and 85b of this 2015 Act; and
- (b) The records of a registered marijuana processing site to ensure compliance with subsection (7) of this section.
- (9) Subject to the provisions of ORS chapter 183, the authority may refuse to register an applicant under this section or may suspend or revoke the registration of a marijuana processing site if the authority determines that the applicant, the owner of the marijuana processing site, a person responsible for the marijuana processing site, or an employee of the marijuana processing site, violated a provision of ORS 475.300 to 475.346, a rule adopted under ORS 475.300 to 475.346 or an ordinance adopted pursuant to section 2, chapter 79, Oregon Laws 2014.
- (10) The authority shall adopt rules to implement this section, including rules that:
- (a) Require a registered marijuana processing site to annually renew the registration for that site;
- (b) Establish fees for registering, and renewing the registration of, a marijuana processing site;
- (c) Require that medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts transferred by a marijuana processing site be tested to ensure the public health and safety; and
- (d) Impose any other standard on the operation of a marijuana processing site to ensure the public health and safety.

SECTION 85a. (1) A marijuana processing site must meet any public health and safety standards established by the Oregon Health Authority by rule related to:

- (a) Cannabinoid edibles, if the marijuana processing site processes marijuana into cannabinoid edibles;
- (b) Cannabinoid concentrates, if the marijuana processing site processes marijuana into cannabinoid concentrates;
- (c) Cannabinoid extracts, if the marijuana processing site processes marijuana into cannabinoid extracts; or
- (d) Any other type of medical cannabinoid product identified by the authority by rule, if the marijuana processing site processes marijuana into that type of medical cannabinoid product.
- (2) The authority shall adopt rules to implement this section.

SECTION 85b. (1) The Oregon Health Authority shall require by rule a marijuana processing site to submit to the authority for inclusion in the database developed and maintained pursuant to section 85e of this 2015 Act the following information:

- (a) The amount of usable marijuana transferred to the marijuana processing site;
- (b) The amount and type of medical cannabinoid products transferred by the marijuana processing site;
- (c) The amount and type of cannabinoid concentrates transferred by the marijuana processing site; and
- (d) The amount and type of cannabinoid extracts transferred by the marijuana processing site.

(2) The authority by rule may require a marijuana processing site to submit to the authority for inclusion in the database developed and maintained pursuant to section 85e of this 2015 Act information that is in addition to the information described in subsection (1) of this section as the authority considers necessary to fulfill the authority's duties under section 85 (1) of this 2015 Act. The authority may not employ any method other than that described in this section to obtain information from a marijuana processing site.

SECTION 85c. (1) A marijuana processing site may not transfer medical cannabinoid products, cannabinoid concentrates or cannabinoid extracts to a person other than a registry identification cardholder, a designated primary caregiver or a medical marijuana dispensary.

(2) A person other than a marijuana processing site may not transfer medical cannabinoid products, cannabinoid concentrates or cannabinoid extracts to a medical marijuana dispensary.

SECTION 85d. Section 85 of this 2015 Act does not apply to a registry identification cardholder or a person who has been designated as a primary caregiver under ORS 475.312 who processes a medical cannabinoid product or a cannabinoid concentrate for a registry identification cardholder.

HB 3400, Section 34 identifies marijuana as a crop for purposes of farm use, farm, farming practice and as farm product as noted below.

SECTION 34. (1) Notwithstanding any other provision of law, marijuana is:

- (a) A crop for the purposes of "farm use" as defined in ORS 215.203;
- (b) A crop for purposes of a "farm" and "farming practice," both as defined in ORS 30.930;
- (c) A product of farm use as described in ORS 308A.062; and
- (d) The product of an agricultural activity for purposes of ORS 568.909.

(2) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land designated for exclusive farm use:

- (a) A new dwelling used in conjunction with a marijuana crop;
- (b) A farm stand, as described in ORS 215.213 (1)(r) or 215.283 (1)(o), used in conjunction with a marijuana crop; and
- (c) A commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a), carried on in conjunction with a marijuana crop.

(3) A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213 and 215.283.

TIME

HB 3400, Section 89 allows local government to regulate the hours of marijuana grow sites and processing sites. There are no additional provisions in Oregon Revised Statutes (ORS) or OAR’s regarding hours of operation for grow sites or processors. The City Council may want to consider the hours required for growing marijuana which is likely on a 24-hour bases. For processors, the operation could be considered similar to an industrial operation, the Development Code does not limit hours.

MANNER

HB 3400, Section 89 allows local government to regulate the manner and access hours of marijuana grow sites and processing sites. There are no additional provisions in ORS or OAR’s regarding manner of operation for grow sites or processors. The City Council may want to consider if a grow site can occur outdoors or indoors. If outdoors what type of visual screening or security requirements should be established? For processors should the operation be entirely indoors? There may be other manners of operation the City Council identifies for discussion and consideration.

MEDICAL MARIJUANA DISPENSARIES

HB 3400 modified the definition for schools related to medical marijuana dispensaries. The Bill redefines public primary and secondary schools and provides a definition for private and parochial schools. The former Oregon Revised Statute (ORS) 457 also included a definition for Career School and was deleted by HB 3400. The Oregon Administrative Rule (OAR) Division 8 still has the definition for Career School (bracketed and italicized text is deleted and bold text is new).

(Medical Marijuana Dispensaries)

SECTION 86. ORS 475.314, as amended by section 5, chapter 79, Oregon Laws 2014, is amended to read:

Enrolled House Bill 3400 (HB 3400-A) Page 45

475.314. *[(1) The Oregon Health Authority shall establish by rule a medical marijuana facility registration system to authorize the transfer of usable marijuana and immature marijuana plants from:]*

[(a) A registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility;

or]

[(b) A medical marijuana facility to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder.]

(1)(a) The Oregon Health Authority shall establish by rule a medical marijuana dispensary registration system for the purpose of tracking and regulating the transfer of:

(A) Usable marijuana, immature marijuana plants and seeds from registry identification cardholders, designated primary caregivers and persons responsible for marijuana grow sites

to medical marijuana dispensaries;

(B) Medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts

from persons responsible for marijuana processing sites to medical marijuana dispensaries;
and

(C) Usable marijuana, immature marijuana plants, seeds, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts from medical marijuana dispensaries to registry identification cardholders and designated primary caregivers.

(b) A person may not operate an establishment for the purpose of providing the services described in paragraph (a) of this subsection unless the person is registered under this section.

(2) The registration system established under subsection (1) of this section must require an applicant for a medical marijuana [facility] dispensary to submit an application to the authority that

includes:

(a) The name of the individual who owns the medical marijuana dispensary or, if a business entity owns the medical marijuana dispensary, the name of each individual who has a financial interest in the medical marijuana dispensary;

[(a)] (b) The name of the [person] individual or individuals responsible for the medical marijuana [facility] dispensary, if different from the name of the individual who owns the medical marijuana dispensary;

[(b)] (c) The address of the medical marijuana [facility] dispensary;

[(c)] (d) Proof, until January 1, 2020, that [the person] each individual responsible for the medical marijuana [facility is a resident of Oregon] dispensary has been a resident of this state for two or more years, and proof that each individual responsible for the medical marijuana dispensary is 21 years of age or older;

[(d)] (e) Documentation, as required by the authority by rule, that demonstrates the medical marijuana [facility] dispensary meets the [qualifications for a medical marijuana facility as described

in] requirements of subsection (3) of this section; and

[(e)] (f) Any other information that the authority considers necessary.

(3) To qualify for registration under this section, a medical marijuana [facility] dispensary:

[(a) Must be located in an area that is zoned for commercial, industrial or mixed use or as agricultural land;]

(a) May not be located in an area that is zoned for residential use;

(b) May not be located at the same address as a marijuana grow site;

(c) Must be registered as a business, or have filed [a pending] an application to register as a business, with the office of the Secretary of State;

[(d) Must not be located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors;]

(d) May not be located within 1,000 feet of:

(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a);

(e) Must not be located within 1,000 feet of another medical marijuana [facility] dispensary; and

[(f) Must comport with rules adopted by the authority related to:]

[(A) Installing a minimum security system, including a video surveillance system, alarm system and safe; and]

[(B) Testing for pesticides, mold and mildew and the processes by which usable marijuana and immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the

registry identification cardholder, the cardholder's designated primary caregiver or the cardholder's registered grower.]

(f) Must meet the requirements of any rule adopted by the authority under subsection (10) of this section.

Staff therefore proposes the following code amendments for Medical Marijuana Grow Sites, Processors, a footnote modification for Dispensaries related to “Career Schools” and a new footnote on electrical inspection:

- Add Medical Marijuana Grow Sites as a permitted use for up to twelve mature plants in R-1, R-2 and R-3 districts as indoor operations only.
- Add Medical Marijuana Grow Sites as a conditional use to all other districts and subdistricts.
- Add Medical Marijuana Processors as a permitted use in all industrial districts and subdistricts (M-1, M-2, M-3, M-4, AI, SD/E and M-1/SP).
- Delete the definition of Career School.
- Add definitions for Medical Marijuana Grow Site and Medical Marijuana Processor.
- Modify the footnote for Medical Marijuana Dispensaries in the Zoning Use Table to delete “Career School” and modify the public or private primary, elementary, secondary school references to align with new definitions in HB 3400.
- Add a footnote for electrical inspections for grow sites as a permitted use in R-1, R-2 and R-3 zones in the Zoning Use Table.

F. MEDICAL MARIJUANA SUBCOMMITTEE RECOMMENDATION: The Subcommittee developed the following recommendations.

Marijuana Grow Sites:

1. Allow up to twelve mature plants in residential R-1, R-2, R-3 or two patients as indoor operations. Above that the use would be a conditional use in all other zones.

Medical Marijuana Processors:

1. Processors be allowed in industrial zones and light manufacturing (M-1, M-2, M-3, M-4, AI, Springbrook District)

Medical Marijuana Dispensaries:

1. Remove Career Schools and change the definition to adopt the new definition of primary/secondary and private/parochial school.

G. PLANNING COMMISSION RECOMMENDATION

The Newberg Planning Commission held a public hearing on January 14, 2016, heard public testimony, and approved Resolution 2015-312, which recommends that the City Council:

- Add Medical Marijuana Grow Sites as a permitted use for up to twelve mature plants in R-1, R-2 and R-3 districts as indoor operations only.
- Add Medical Marijuana Grow Sites as a conditional use to all other districts and subdistricts.

- Add Medical Marijuana Processors as a permitted use in all industrial districts and subdistricts (M-1, M-2, M-3, M-4, AI and SD/E).
- Delete the definition of Career School.
- Add definitions for Medical Marijuana Grow Site and Medical Marijuana Processor.
- Modify the footnote for Medical Marijuana Dispensaries in the Zoning Use Table to delete “Career School” and modify the public or private primary, elementary, secondary school references to align with new definitions in HB 3400.
- Add a footnote for electrical inspections for grow sites as a permitted use in R-1, R-2 and R-3 zones in the Zoning Use Table.

FISCAL IMPACT: The fiscal impact of allowing medical marijuana grow sites and processors is unknown at this time.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

Medical Marijuana Grow Sites and Processors are a legal activity under state law, and the city wishes to allow businesses the opportunity to operate in the city. Zoning restrictions on the uses are appropriate to address potential adverse impacts on adjacent uses.

ATTACHMENTS:

Ordinance 2016-2793 with

Exhibit “A”: Proposed Development Code Text Amendment

Exhibit “B”: Findings

1. Resolution No. 2015-3244
2. Planning Commission Resolution 2016-312



ORDINANCE No. 2016-2793

**AN ORDINANCE AMENDING THE NEWBERG DEVELOPMENT CODE
REGARDING MEDICAL MARIJUANA GROW SITES, PROCESSORS AND
DISPENSARIES; AND DECLARING AN EMERGENCY**

RECITALS:

1. House Bill 3400 enacted by the Oregon Legislature in 2015 modified provisions of ORS 475.300 – 475.346 the Oregon Medical Marijuana Act.
2. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding medical marijuana grow sites, processors and dispensaries on December 7, 2015, 2015, under City Council Resolution 2015-3244.
3. After proper notice, the Newberg Planning Commission held a hearing on January 14, 2016 to consider the amendment. The Commission considered testimony, deliberated, and found that adding regulations for medical marijuana grow sites, processors and modifying regulations of dispensaries would be in the best interests of the city. They approved Resolution 2016-312, which recommends that the City Council adopt the proposed amendments to the Newberg Development Code.
4. After proper notice, the Newberg City Council held a hearing on February 1, 2016 to consider the proposed amendment. The Council considered testimony and deliberated.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. The Council finds that adding regulations for medical marijuana grow sites and processors, and modifying regulations of dispensaries 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. Exhibit "B" is by this reference incorporated.
3. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect immediately upon passage by the council and signature of the mayor.

➤ **EFFECTIVE DATE** of this February 2, 2016.

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of February, 2016, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Sue Ryan, City Recorder

ATTEST by the Mayor this _____ day of _____, 2016.

Bob Andrews, Mayor

**Exhibit “A” to Ordinance 2016-2793
Development Code Amendments –File DCA-15-002
Medical Marijuana Grow Sites,
Processors and Dispensaries**

Section 1. The Newberg Development Code 15.05.030 shall be amended to read 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:

“Medical marijuana dispensary” means a medical marijuana facility registered by the Oregon Health Authority and in compliance with all other provisions of Oregon law.

“Medical Marijuana Grow Site” means a location registered under ORS 475.304 where marijuana is produced for use by a registry identification cardholder.

“Medical Marijuana Processor” means a medical marijuana processing facility registered by the Oregon Health Authority.

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

~~“School, career”, for the purposes of medical marijuana dispensaries, means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.~~

Section 2. Newberg Development Code Section 15.305.020 shall be amended to read as follows:

15.305.020 Zoning use table

See Exhibit A, Attachment 1

Section 3. Newberg Development Code Section 15.305.030 is added to read as follows:

See Exhibit A, Attachment 2

**Exhibit “B” to Ordinance 2016-2793
Findings –File DCA-15-002
Medical Marijuana Grow Sites,
Processors and Dispensaries**

**Findings –File DCA-15-002
Medical Marijuana Grow Sites, Processors and Dispensaries**

I. Statewide Planning Goals - relevant goals

Goal 1, Citizen Involvement, requires the provision of opportunities for citizens to be involved in all phases of the planning process.

Finding: The City Council initiated the potential development code amendment at a public meeting on December 7, 2015. The Marijuana Subcommittee meet on December 9, 2015 at a public meeting to review potential place, time and manner regulations for Medical Marijuana Grow Sites, Processors and Dispensaries. The Planning Commission, after proper notice, held a public hearing on January 14, 2016. The City Council will consider the recommendation of the Planning Commission at a future public hearing date, and decide whether or not to adopt the development code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

Goal 2, Land Use Planning, requires the development of a process and policy framework that acts as a basis for all land use decisions.

Finding: The Medical Marijuana Grow Site, Processor and Dispensary proposal is supportive of this goal because it was developed following city procedures for legislative action.

II. Newberg Comprehensive Plan - relevant policies

A. CITIZEN INVOLVEMENT GOAL: To maintain a Citizen Involvement Program that offers citizens the opportunity for involvement in all phases of the planning process.

Finding: The City Council initiated the potential development code amendment at a public meeting on December 7, 2015. The Marijuana Subcommittee meet on December 9, 2015 at a public meeting to review potential place, time and manner regulations for Medical Marijuana Grow Sites, Processors and Dispensaries. The Planning Commission, after proper notice, held a public hearing on January 14, 2016. The City Council will consider the recommendation of the Planning Commission at a future public hearing date, and decide whether or not to adopt the development code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

B. LAND USE PLANNING GOAL: To maintain an on-going land use planning program to implement statewide and local goals. The program shall be consistent with natural and cultural resources and needs.

Finding: The Medical Marijuana Grow Sites, Processors and Dispensaries proposal is supportive of this goal because it was developed following city procedures for legislative action.

H. THE ECONOMY GOAL: To develop a diverse and stable economic base.

1. General Policies

c. The City will encourage the creation of a diversified employment base, the strengthening of trade centers and the attraction of both capital and labor intensive enterprises.

g. The City shall encourage business and industry to locate within the Newberg City limits.

Finding: The city encourages new businesses to develop within the city. A Medical Marijuana Grow Sites, Processor and Dispensary operation is a legal business under State law. Allowing Medical Marijuana Grow Sites in residential zones R-1, R-2 and R-3 as permitted uses with up to 12 mature plants or two patients as an indoor operation and as conditional in all other zones; allowing Medical Marijuana Processors as a permitted use in M-1, M-2, M-3, M-4, AI and SD/E; and adjusting the footnote language for Medical Marijuana Dispensaries to align with HB 3400 definitions for public, private or parochial schools, is consistent with this Comprehensive Plan goal.

III. Conclusion: The proposed development code amendments meet the applicable requirements of the Statewide Planning Goals, and the Newberg Comprehensive Plan, and should be approved.

330	School, primary or secondary	P	P	P		P										C			
331	College	P	P	P		P	P	P	P(15)							C	P		
332	Commercial educational services	C	C	C		C	P	P	P								C		
340	PARKS AND OPEN SPACES																		
341	Open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
342	Park	P	P	P	P	P	P	P	P	P				P(16)		P(17)	P		
Def.	Golf course	P	P	P												P(17)			
350	PUBLIC SERVICES																		
351	Community services	C	C	C	C	P		P	P	P						C	P		
352	Emergency services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Def.	Pound, dog or cat							C	C		C	P	P	C	C				
Def.	Cemetery	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
360	TRANSPORTATION																		
Def.	Transportation facilities and improvements	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Def.	Transit center							P	P	P	P	P							
Def.	Parking facility			P		C	C	P	P(18)	C	P	P	P			P		P	
Def.	Airport, landing field											C	C						P
Def.	Heliport, helipad	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P
Def.	Marina									C									
	Pilings, piers, docks, and similar in-water structures									C									
370	UTILITIES																		
Def.	Basic utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Def.	Utility distribution plant or yard											P	P	P					
Def.	Wastewater treatment plant										C	P	C						
Def.	Telecommunication facility incorporated into existing structure/utility pole and no taller than 18 feet above existing structure/utility pole	C	C	C	C	C	S	S	S	S	S	S	S	S	S	S			
Def.	Telecommunication facility, including radio towers and transmitters, which are 100 feet or less in height, except those incorporated into an existing structure no taller than 18 feet above that structure.						C	C	C		C	S(19)	S(19)	P	C		C		
Def.	Telecommunication facility, including radio towers and transmitters, which are over 100 feet						C	C	C		C	C	C	C	C		C		
400	COMMERCIAL USES																		
410	COMMERCIAL OFFICES																		
411	Medical office			C		P	P(20)	P	P(21)								P		
412	Local business office					P(22)	P(20)	P	P(21)										
420	COMMERCIAL SALES AND RENTALS																		
421	Retail sales – General						P(20)	P	P(15)(21)	P			P(23)						
422	Retail sales – Bulk outdoor							P	C				P						
423	Retail sales – Convenience						P(20)	P	P(21)	P			P(24)			P(25)			
Def.	Temporary merchant							S	S(21)										
	Medical marijuana dispensary							P(35)	P(35)										
425	Retail food and beverage production							S	S										
430	EATING AND DRINKING ESTABLISHMENTS																		
430	Eating and drinking – Alcohol-related							P	P(21)	P									Requires liquor license
430	Eating and drinking – Non-alcohol-related						P(20)	P	P(21)	P	P	P							C(26)
440	COMMERCIAL SERVICES																		
441	Personal services					P	P(20)	P	P(21)	P									
442	Commercial services						P(20)	P	P(21)										
443	Commercial vehicle service							P	C		P(27)	P				P(28)			
Def.	Kennel, commercial							C	C		C	P	P	C	C				
450	COMMERCIAL RECREATION																		

- (21) Drive-up service windows accessory to an existing business on the site with walk-in customer service, such as a drive-up bank window, are allowed only with a **conditional use permit**. Otherwise, drive-up service windows, except those in service on April 1, 2002, are prohibited. Changes in **use** will not be allowed.
- (22) Retail sales of goods on site not allowed.
- (23) Limited to secondhand stores.
- (24) Store size is limited to 2,000 square feet gross floor area.
- (25) Store size is limited to 5,000 square feet gross floor area.
- (26) **Use** must demonstrate that it is compatible with **airport** operations.
- (27) Limited to service stations.
- (28) Limited to card lock fueling only. Retail services are limited to self-vending services.
- (29) Permitted provided the **structure** is designed for easy conversion to industrial **use**, including not having fixed seating.
- (30) Limited to 10,000 square feet maximum floor area.
- (31) Allowed indoors only.
- (32) Allowed indoors only. Outdoor **use** requires a **conditional use permit**.
- (33) Must be aviation-related. See Chapter 15.332 NMC.
- (34) Limited to expansion or change of existing heavy manufacturing uses.
- (35) Shall not be located at the same address as a state-registered marijuana grow site, or within 1,000 feet of the real property comprising a public park, a public elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030 ~~(1)(a) public or private primary, elementary, secondary or career school~~. Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school ~~private elementary, secondary or career school~~ to the closest point of the premises of a dispensary. The premises consist of the dispensary building, or the portion of the building used for a dispensary. Shall not be located within 1,000 feet of another medical marijuana dispensary. Operating hours are limited to the hours between 9:00 a.m. and 8:00 p.m.
- (36) Allows up to 12 mature plants; indoor operations only.
- (37) Provide for electrical inspection for permitted uses to support proposed operations as inspected by Yamhill County.

1 Code reviser's note: Section 25 of Ordinance 2763 provides:

SECTION 25: Grace period for previously permitted or conditional uses. Where an **applicant** demonstrates that a particular **use** was a permitted or conditional **use** on a specific property immediately prior to adoption of this ordinance, but that the **use** is no longer either a permitted or conditional **use** on that property due to this ordinance, the **applicant** may establish the **use** as either a permitted or conditional **use**, as provided in the prior **code**, provided the **use** is legally commenced prior to January 1, 2018.

Exhibit A, Attachment 2

15.305.030 Zoning use table - Use Subdistricts.

600	MISCELLANEOUS USES	R-1/PD	R-1/.01	R-1/.04	R-1/6.6	R-1/SP	R-2/PD	R-2/SP	SD/LDR	SD/MMR	R-3/PD	RP/SP	RP/LU	AO	ARO	C-1/SP	C-2/LU	C-2/PD	C-2/SP	C-3/LU	SD/V	SD/NC	SD/H	CC	CF/RF	RF	IO	M-1/SP	SD/E	FHO	II	AIO	H	SC	BI																
	Medical Marijuana Processor																																							P	P										
	Medical Marijuana Grow Site	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C				

Key:

P: Permitted use

S: Special use – Use requires a special use permit

C: Conditional use – Requires a conditional permit

X: Prohibited use

(#): See notes for limitations



PLANNING COMMISSION RESOLUTION 2016-312

**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL AMEND THE
NEWBERG DEVELOPMENT CODE REGARDING MEDICAL MARIJUANA GROW
SITES, PROCESSORS AND DISPENSARIES**

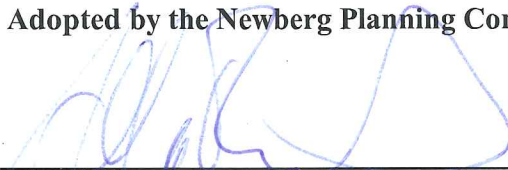
RECITALS

1. On March 19, 2014, Senate Bill 1531 was signed into law. SB 1531 gives local governments the ability to impose certain regulations and restrictions on the operation of medical marijuana dispensaries.
2. House Bill (HB) 3400 was approved in the 2015 Oregon Legislative session related to recreational and medical marijuana. Some of the provision of HB 3400 modified the laws related to medical marijuana.
3. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding medical marijuana grow sites and processors on December 7, 2015.
4. After proper notice, the Newberg Planning Commission held a hearing on January 14, 2016 to consider the amendment. The Commission considered testimony and deliberated.

The Newberg Planning Commission resolves as follows:

1. The Commission finds that adding regulations for medical marijuana grow sites, medical marijuana processors and modifications to a footnote for medical marijuana dispensaries regarding Career Schools and definition of public elementary or secondary school or private or parochial school to align with HB 3400 would be in the best interests of the city and 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 14th day of January, 2016.



Planning Commission Chair

ATTEST:



Planning Commission Secretary

List of Exhibits:

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

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 1, 2016

Order ___	Ordinance ___	Resolution <u>X</u>	Motion ___	Information ___
No.	No.	No. 2016-3253		

SUBJECT: Initiate an amendment to the Newberg Municipal Code, Title 15 Development Code for Place, Time and Manner Regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers

**Contact Person (Preparer) for this Motion: Doug Rux, Director
Dept.: Community Development
File No.: DCA-16-001**

RECOMMENDATION:

Adopt Resolution No. 2016-3253, initiating an amendment to the Newberg Municipal Code, Title 15 Development Code for Place, Time and Manner regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers.

EXECUTIVE SUMMARY:

The Oregon Legislature enacted four bills during the 2015 legislative session related to the Oregon Medical Marijuana Act and Measure 91. House Bill (HB) 3400 was the omnibus bill covering recreational marijuana and modifications to the medical marijuana program. HB 2014 was enacted addressing taxes on the sale of recreational marijuana, SB 460 related to limited retail sales of marijuana from medical marijuana dispensaries and SB 844 enacted a task force on researching the medical and public health properties of cannabis. In addition to the enacting of the four bills the Oregon Liquor Control Commission adopted temporary Oregon Administrative Rules (OAR's) on November 20, 2015 for recreational marijuana under Chapter 845, Division 25.

On September 8, 2015 the Newberg City Council was provided background information on medical and recreational marijuana at its Work Session. At its Business Session on September 8th the City Council established the Marijuana Subcommittee (Subcommittee) comprised of Councilors Rourke, Bacon and McKinney along with non-voting member Mayor Andrews. The City Council also directed staff to bring back an ordinance with a ban of the sale of recreational marijuana from Medical Marijuana Dispensaries.

On September 21, 2015 the Newberg City Council passed ordinance 2015-2787 declaring a ban on the early sale of recreational marijuana by medical marijuana dispensaries and declaring an emergency.

The Subcommittee held its third meeting on January 12, 2016. A proposed timeline was included in their packet of material to address recreational marijuana place, time and manner for wholesalers, laboratories, research certificates and retailers. The Oregon Liquor Control Commission has indicated they will start issuing licenses for retailers in the 3rd Quarter of 2016.

The Subcommittee subsequently passed a motion 3-0 directing staff to create a Request for Council Action to initiate the Development Code amendment process for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers to bring forward for Council consideration on February 1, 2016.

The proposed amendment would include the following changes:

1. Place, time and manner land use regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers.

The City Council is not asked to make a decision on these proposed changes at this time; only to initiate the amendment so that these proposed changes can be studied through the public hearing process. If the Council initiates the amendment, staff will schedule the item before the Subcommittee, then for a hearing at the Planning Commission for a recommendation and then the City Council for a final decision.

FISCAL IMPACT:

No fiscal impact at this time.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):

Initiating the Development Code Amendment will help meet Goal #1 – Create a clear vision for the future of Newberg, maintain its small town feel and Objective 1.1 – Support and encourage efforts to create a specific vision for Newberg.



RESOLUTION No. 2016-3253

A RESOLUTION INITIATING AN AMENDMENT TO THE NEWBERG MUNICIPAL CODE, TITLE 15 DEVELOPMENT CODE FOR PLACE, TIME AND MANNER REGULATIONS FOR RECREATIONAL MARIJUANA WHOLESALERS, LABORATORIES, RESEARCH CERTIFICATES AND RETAILERS

RECITALS:

1. The Oregon Legislature enacted four bills during the 2015 legislative session related to the Oregon Medical Marijuana Act and Measure 91. House Bill (HB) 3400 was the omnibus bill covering recreational marijuana and modifications to the medical marijuana program.
2. On September 8, 2015 the Newberg City Council was provided background information on medical and recreational marijuana at its Work Session. At its Business Session on September 8th the City Council established the Marijuana Subcommittee (Subcommittee) comprised of Councilors Rourke, Bacon and McKinney along with non-voting member Mayor Andrews.
3. The Subcommittee held its third meeting on January 12, 2016. A proposed timeline was included in their packet of material to address recreational marijuana place, time and manner for recreational wholesalers, laboratories, research certificates and retailers. The Oregon Liquor Control Commission has indicated they will start issuing licenses for retailers in the 3rd Quarter of 2016.
4. The Subcommittee subsequently passed a motion 3-0 directing staff to create a Request for Council Action to initiate the Development Code amendment process for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers to bring forward for Council consideration on February 1, 2016.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council initiates an amendment to the Newberg Municipal Code, Title 15 Development Code for Place, Time and Manner Regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers. This starts the public process to study the proposed amendments.
2. By initiating this amendment, the council does not commit to taking any specific action on the proposal. It only wishes to give the amendment full consideration in a public hearing.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 2, 2016

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of February, 2016.

Sue Ryan, City Recorder

ATTEST by the Mayor this 4th day of February, 2016.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 1, 2016

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2016-3242

SUBJECT: A resolution to authorize the Mayor and City Manager Pro-Tem to finalize and execute a Cooperative Improvement Agreement (No. 28658) with the Oregon Department of Transportation for the Oregon Route 18: Newberg-Dundee Bypass – Phase 1

Contact Person (Preparer) for this Motion: Kaaren Hofmann, P.E., City Engineer
Dept.: Engineering Services Department
File No.:

RECOMMENDATION:

N/A

EXECUTIVE SUMMARY:

This is a placeholder staff report. Staff and the Oregon Department of Transportation are continuing to finalize the terms of the agreement. Staff expects to have a final agreement early in the week of January 25th. Once the agreement is received a revised staff report will be prepared and sent out.

FISCAL IMPACT:

The City of Newberg entered into a loan agreement with ODOT (OTIF-0050) on July 1, 2013 to finance our portion of the construction costs of this project. Our portion is estimated to be \$2,211,200.00 or 13.82% of the costs. Our installment payments are currently set at \$142,916 for the next twenty years.

STRATEGIC ASSESSMENT:

The City Council’s Goal #5 is to “Maintain and modernized the City’s transportation and utilities infrastructure”. More specifically, Objective 5.11 is to continue to support the completion of Phase 1 and the future build out of the Newberg-Dundee Bypass.

This agreement will memorialize our negotiations with ODOT and who will be responsible for what portion of the project.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 1, 2016

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2016-3242

SUBJECT: A resolution to authorize the Mayor and City Manager Pro-Tem to finalize and execute a Cooperative Improvement Agreement (No. 28658) with the Oregon Department of Transportation for the Oregon Route 18: Newberg-Dundee Bypass – Phase 1

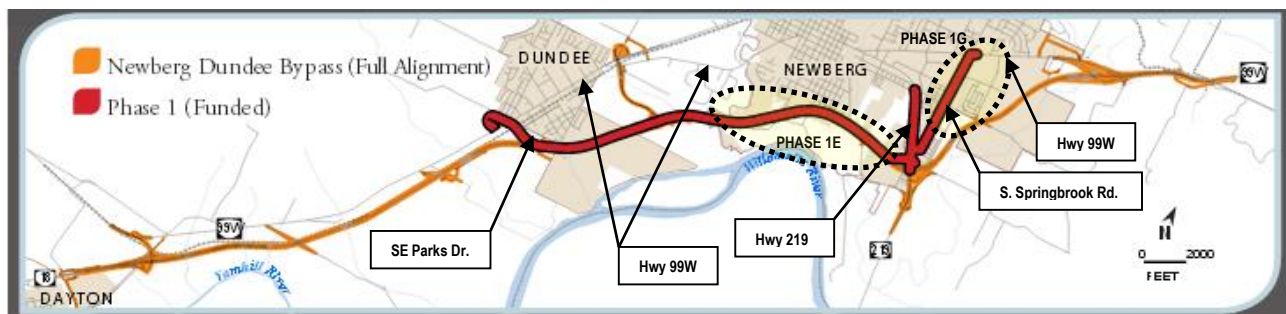
Contact Person (Preparer) for this Motion: Kaaren Hofmann, P.E., City Engineer
Dept.: Engineering Services Department
File No.:

RECOMMENDATION:

Adopt Resolution No. 2016-3242 authorizing the City Manager Pro-Tem to finalize and execute Agreement No. 28658 with the Oregon Department of Transportation for the Newberg-Dundee Bypass Phase 1.

EXECUTIVE SUMMARY:

The Oregon Department of Transportation (ODOT) is working to complete Phase 1 of the Newberg-Dundee Bypass Project, which upon completion will divert Highway 99W traffic onto the new bypass from Springbrook Road in the City of Newberg to a point west of SE Parks Drive in the City of Dundee, as illustrated in the map below. Phase 1E of the bypass project is that portion of work from approximately Waterfront Street to the west and Sandoz Road to the east in Newberg. Phase 1G of the bypass is a separate portion of the work that extends from Highway 219 on Springbrook Road north to Highway 99W, as shown below.



Construction of this project is scheduled to be fully complete in 2017.

The attached agreement sets out the responsibilities of each entity for construction, which is currently underway, through maintenance. Some highlights include:

- Springbrook Road between OR 99W and OR 219 will be designated a state highway (OR 18) until the Bypass is extended easterly to OR 99W.
- When the Bypass is extended easterly, the City will accept jurisdiction of Springbrook Road.
- The City will maintain the sound walls along the right-of-way and any landscaping constructed as

part of the project.

- The City will be responsible for the power costs and maintenance of the illumination under the 11th Street structure.
- ODOT is responsible for all costs associated with construction and installation of the project minus the local match.
- ODOT will be constructing an emergency access onto the elevated portion of the bypass from Weatherly Way per the City's request.
- ODOT has agreed to construct a signal at the intersection of OR 219 and Everest within five years.
- ODOT will be responsible for permitting and controlling access onto Springbrook Road. Existing driveways will be permitted by the State prior to construction completion.
- ODOT shall maintain all roadway improvements between the curbs and the traffic signals.
- ODOT will monitor the performance of the local street network and if traffic that is bound for Wilsonville Road eastbound or traffic bound to the Bypass from Wilsonville Road westbound causes a failure of an intersection of a quantifiable safety problem, ODOT will construct the appropriate remedy.
- The agreement will remain in effect for the purpose of ongoing maintenance or road facilities and power responsibilities for twenty calendar years. The agreement will be evaluated, reconsidered and/or amended every five years.

FISCAL IMPACT:

The City of Newberg entered into a loan agreement with ODOT (OTIF-0050) on July 1, 2013 to finance our portion of the construction costs of this project. Our portion is estimated to be \$2,211,200.00 or 13.82% of the local match costs. Our installment payments are currently set at \$142,916 for the next twenty years.

STRATEGIC ASSESSMENT:

The City Council's Goal #5 is to "Maintain and modernized the City's transportation and utilities infrastructure". More specifically, Objective 5.11 is to continue to support the completion of Phase 1 and the future build out of the Newberg-Dundee Bypass.

This agreement will memorialize our negotiations with ODOT and who will be responsible for what portion of the project.



RESOLUTION No. 2016-3242

A RESOLUTION TO AUTHORIZE THE CITY MANAGER PRO-TEM TO FINALIZE AND EXECUTE A COOPERATIVE IMPROVEMENT AGREEMENT (NO. 28658) WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR THE OREGON ROUTE 18: NEWBERG-DUNDEE BYPASS – PHASE 1

RECITALS:

1. The Oregon Department of Transportation (ODOT) is in the process of constructing Phase 1 of the Newberg-Dundee Bypass.
2. The City Council's Goals include an objective to continue to support the completion of Phase 1 and the future build out of the Newberg-Dundee Bypass.
3. The City of Newberg entered into a loan agreement with ODOT (OTIF-0050) on July 1, 2013 to finance our portion of the construction costs of this project. Our portion is estimated to be \$2,211,200.00 or 13.82% of the local match costs.
4. The last construction contract for Phase 1 is scheduled to be awarded in February 2016 with completion in 2017.
5. On December 16, 2015, Oregon Department of Transportation (ODOT) submitted a Cooperative Improvement Agreement that deals with Phase 1 of the Newberg-Dundee Bypass.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Agreement No. 28658 will remain in effect for the purpose of ongoing maintenance of road facilities and power responsibilities for twenty calendar years. The agreement will be evaluated, reconsidered and/or amended every five years.
2. The City Council does hereby authorize the Mayor and City Manager Pro-Tem to finalize and execute and Agreement with ODOT that sets out the responsibilities associated with design, construction and maintenance of Phase 1 of the Newberg-Dundee Bypass. The draft agreement is attached.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 2, 2016.

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of February, 2016.

Sue Ryan, City Recorder

ATTEST by the Mayor this 4th day of February, 2016.

Bob Andrews, Mayor

COOPERATIVE IMPROVEMENT AGREEMENT
Oregon Route 18: Newberg-Dundee Bypass - Phase 1
City of Newberg

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

RECITALS

1. Oregon Jobs and Transportation Act of 2009 (JTA) Program, hereinafter referred to as the "JTA Program", provides funding for preservation and modernization projects chosen by the Oregon Transportation Commission (OTC). On October 21, 2009 the OTC approved funding for the first phase of the Newberg Dundee Bypass project and amended the Statewide Transportation Improvement Program (STIP) to include the project.
2. Oregon Route 99W (OR 99W), Oregon Route 18 (OR 18) and Oregon Route 219 (OR 219), are part of the state highway system under the jurisdiction and control of the OTC. Springbrook Road, Wilsonville Road are part of the city street system under the jurisdiction and control of Agency. This phase of the Newberg-Dundee Bypass will be temporarily routed upon Springbrook Road and will affect the intersection at Wilsonville Road. This Agreement will address only those portions of street system within the corporate limits of the City of Newberg.
3. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
4. State, by ORS [366.220](#), is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS [373.020](#), the jurisdiction of state highways routed upon city streets extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with the Agency.
5. By the authority granted in ORS [810.210](#), State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained,

or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.

6. By the authority granted in ORS [810.080](#) State has the authority to establish marked pedestrian crosswalks on its highway facilities.
7. By the authority granted in ORS [366.425](#), State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
8. Phase 1 of the Newberg-Dundee Bypass (Bypass) will construct two (2) lanes, one (1) in each direction of the four (4) lane Bypass between City of Newberg and City of Dundee; approximately four (4) miles in length. Phase 1 will also include required local circulation improvements needed to accommodate construction of this phase of the Bypass. The Bypass, in Phase 1, will have access points at the two ends, OR 219 in Newberg and OR 99W south of Dundee. The Bypass is designated an expressway and will operate at fifty-five (55) miles per hour. The connection at OR 99W (Dundee) is a temporary connection and may be removed when the Bypass is extended to OR 18 in City of Dayton. The Oregon Transportation Commission shall pass a resolution to designate the portion of Springbrook Road between OR 99W (at the Springbrook Road intersection) and OR 18 (at the OR 219 intersection) as a state highway for use as a state highway. The use of this portion of Springbrook Road as a state highway shall be temporary and jurisdiction shall be restored to Agency when the easterly portion of the Bypass is constructed. This Agreement will address the Project elements constructed within Agency's corporate limits as represented in Exhibit A.
9. By the authority under ORS [377.700](#) to [377.992](#) Outdoor advertising signs visible from the portion of Springbrook Road that is under state jurisdiction, is subject to the Oregon Motorist Information Act (OMIA). The OMIA regulates the number, size and placement of outdoor advertising signs visible from the state highway through a permit system administered by State with cooperation and involvement from Agency. The signs on Springbrook Road are business signs and will not require a permit. Any on premise business sign added after the jurisdictional transfer of Springbrook Road will need to be approved by State and Agency to assure conformity to State and Agency codes.

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

TERMS OF AGREEMENT

1. This Agreement will supersede the maintenance and power responsibilities of the existing signals located at OR 219 and Springbrook Road and OR 99W and Springbrook Road identified in Agreement No. 28784.
2. Under such authority, State and Agency agree State shall design and construct the following improvements within Agency boundaries as part of the first phase of the Newberg Dundee Bypass project:
 - a. Construct two (2) southbound left turn lanes on OR 99W at Springbrook Road;
 - b. Widen Springbrook Road to three (3) lanes: one (1) northbound lane; one (1) southbound lane; and a center left turn lane between OR 99W and OR 219; and complete all improvements that include, but are not limited to: curb, median, striping, signage, shoulders, sidewalks, Americans with Disability Act (ADA) ramps, landscaping, street trees, and storm drainage conveyance/detention/water quality facilities;
 - c. Install a traffic signal at the intersection of Springbrook Road and Fernwood Road/Second Street;
 - d. Necessary capacity improvements/upgrades to the existing traffic signals at the intersections of: OR 99W and Springbrook Road; Springbrook Road and Hayes Street; and Springbrook Road at OR 219.
 - e. Construct two (2) southbound left turn lanes on Springbrook Road at OR 219;
 - f. Portion of OR 219 between Springbrook Road and the new Bypass signalized intersection on OR 219 shall comply with Agency's Transportation System Plan (TSP);
 - g. Rerouting and connection of Wilsonville Road to the new Bypass signalized intersection on OR 219;
 - h. Disconnect Wilsonville Road from Springbrook Road;
 - i. Construct a cul-de-sac next to Wilsonville Road for the south terminus of Springbrook Road. New section of street will be named McKern Court. The project will pay for the cost of a change of address for the impacted parties;
 - j. Channelize turning movements from Second Street to OR 219 for right turns only;
 - k. Construct a right turn lane on Wynooski Road at OR 219;
 - l. Install sound walls with graffiti resistant coating at Mountain View, Nut Tree Ranch and Avalon Manufactured Home Parks;

- m. Remove 13th Street between Meridian Street and River Street and construct a cul-de-sac for the south terminus of Meridian Street;
- n. Relocate the intersection of College Street at Waterfront/14th Street;
- o. Construct a new local street frontage road preliminarily named "Weatherly Way" to Agency standards, located on the north side of the Bypass improvements (approximately between Engineers stations 486+00 to 508+00). Improvements to include but are not limited to pavement, curbs, street lighting, signage, sidewalk on one side, street trees (one side), and storm drainage conveyance/detention/water quality facilities;
- p. Reconstruct street improvements on 11th Street between Willamette Street and Wynooski Road. Improvements include but are not limited to sidewalks, landscaping, curb removal/replacement, driveway closures, and driveways; and a two (2) inch overlay at the end of the project;
- q. Relocate existing public utilities within the project area as shown in Exhibit A;
- r. As mitigation for impacts of the project, and if appropriate warrants are met within five (5) years, construct a traffic signal at the intersection of OR219 and Everest Street;
- s. Construct an access for emergency purposes only from Weatherly Way to the Bypass at Engineer Station "L" 491.00, Left, OR 18 Mile Post 58.044..

Collectively these improvements shall hereinafter be referred to as "Project." The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

3. The JTA Program funds for the first phase of the Newberg-Dundee Bypass Project are limited to \$192,000,000. Agency has entered into an agreement with Cities of Dundee, McMinnville, Yamhill County and the Confederated Tribes of the Grand Ronde for local match share of \$20,000,000. In the event the Project cannot be constructed within the estimated budget, the Parties shall examine alternatives for a reduced scope and/or reevaluate funding obligations, then an amendment to this Agreement will be entered into to reflect such changes. If such agreement cannot be reached, State at its sole discretion shall determine whether the Project scope must be modified to meet the Project budget or to commit additional funds to the Project.
4. The funds available under the JTA Program are State Highway Funds. To be eligible for reimbursement under the JTA Program, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution.
5. This Agreement is effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance of road facilities

and power responsibilities for the traffic signals installed or improved as part of the Project. The Agreement will remain in effect until the Bypass is constructed easterly to OR 99W, as outlined in Recitals, paragraph 8. The Project construction is estimated to be completed within two (2) calendar years following the date of final execution of this Agreement by both Parties. The Parties agree to evaluate, reconsider and/or amend all or portions of its terms, obligations, and provisions every five (5) calendar years following the date of final execution of this Agreement by both Parties and any changes shall be by an amendment, signed by both Parties.

6. Agency and State have a joint obligation to ensure timely expenditure of the JTA Program funds and to comply with the provisions of the bonds that finance the JTA Program.
7. State and Agency agree to cooperate to carry out their respective responsibilities under the OMIA.

AGENCY OBLIGATIONS

1. Agency agrees that upon OTC approval of a resolution, the portion of Springbrook Road located between OR 219 and OR 99W from curb to curb will be under State jurisdiction and part of the state highway system consistent with ORS [373.010](#) and State will be responsible for maintaining the road surface between the curbs, permitting access to the roadway and maintaining the traffic signals.
2. Agency agrees that upon completion of the eastern phase of the Newberg-Dundee Bypass to construct the Bypass from OR 219 to OR 99W near Rex Hill, Agency shall accept jurisdiction of the portion of Springbrook Road between OR 219 and OR 99W and all existing signals.
3. Agency agrees to allow State the use of Agency streets for detouring of traffic for Project purposes, as discussed under State Obligations, paragraph 5.
4. Agency agrees State's contribution for resurfacing and maintenance for minor/normal pavement surface deterioration of Agency streets used for Project detour and construction vehicle purposes is estimated at \$98,950. If it is determined the resurfacing is going to exceed the estimate, State and Agency shall meet to mutually agree upon an estimate and the responsibility of each Party to cover costs.
5. Agency understands State shall purchase right of way from Agency for Project purposes. Right of way purchased by State shall be in accordance to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and State Right of Way Manual. Upon completion of the Project, State will transfer and Agency will accept, any new right of way acquired for the project construction on the Agency's street system. The method of conveyance will be coordinated by the State's Region Right of Way Manager.

6. Agency shall issue necessary permits or provide permissions to State for construction of Project facilities within Agency's air space and existing right of way through Agency established permitting procedures.
7. Agency shall, with its own forces and at its own expense, perform all maintenance functions, including any graffiti removal or beautification of the sound walls constructed as part of the Project within Agency's right of way, including those walls constructed under Terms of Agreement, paragraph 2 (l).
8. Agency shall, with its own forces and at its own expense, be responsible for all maintenance, power, and irrigation for all landscaping constructed as part of the Project within Agency's right of way.
9. Agency shall, upon completion of Project, be responsible for 100 percent maintenance and power costs associated with the illumination under the 11th Street structure (Bridge No. 22009). Agency shall request power company to send invoices directly to Agency.
10. Agency shall, upon completion of Project, accept ownership and full control of the surface and underground improvements connected with operation of Agency streets. This includes storm sewer and the water quality/detention ponds. Agency shall obtain a permit to occupy or perform operations on a state highway through State's District 3 Office prior to commencement of any work.
11. Agency, by execution of Agreement, gives its consent as required by ORS [373.030\(2\)](#) and ORS [105.760](#) to any and all changes of grade within the Agency limits, and gives its consent as required by ORS [373.050\(1\)](#) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Agreement.
12. Agency agrees to maintain signs demarking clearance requirements at locations where Project crosses over Agency streets, including College Street, River Street, and Meridian Street. Such signage shall be installed by State and maintained by Agency.
13. Upon Project completion, Agency agrees to maintain the following Agency streets affected by this Project: Weatherly Way, College Street, River Street, 11th Street, 12th Street and McKern Court.
14. Agency shall work with State in good faith to identify appropriate remedies if the traffic that is bound for Wilsonville Road eastbound or to the Bypass from Wilsonville Road westbound causes a failure of an intersection or a quantifiable safety problem as stated in Exhibit B, attached hereto and by this reference made a part hereof.
15. Agency grants State, or its contractor, the right to enter onto and occupy Agency's right of way within the Bypass project limits for the performance of field work, Bypass project construction and maintenance as set forth in this Agreement. All

Agency right of way utilized by State or its contractor shall be restored to equal or better condition by State upon completion of the Project.

16. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and provide the required Workers' Compensation coverage unless such employers are exempt under ORS [656.126](#). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
17. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
18. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
19. Agency shall perform any services under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement include, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
20. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project.

Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

21. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
22. Agency's Project Manager for this Project is Kaaren Hofmann, City Engineer, 414 E. First Street, Newberg, Oregon 97132; (503) 537-1223, kaaren.hofmann@newbergoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall prepare a resolution for the OTC to designate the portion of Springbrook Road located between OR 219 and OR 99W from curb to curb as part of the state highway system consistent with ORS [373.010](#). State will resume responsibilities for maintenance and operations of the roadway between the curbs, permitting access to this portion of Springbrook Road and the traffic signals consistent with ORS 373.020 on the date the resolution is adopted.
2. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
3. State, or its consultant, shall acquire all necessary rights of way for the Project according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, and the State Right of Way Manual. The Parties have entered into a separate Intergovernmental Agreement No. 29496 for Right of Way Services identifying the roles and responsibilities of the Parties for any right of way activities. Upon completion of the Project, State will transfer and Agency will accept any new right of way acquired for the project construction on the Agency's street system. The method of conveyance will be coordinated by the State's Region Right of Way Manager.
4. State shall be responsible for all costs associated with construction and installation of the Project.
5. State's contribution for resurfacing and maintenance for minor/normal pavement surface deterioration of Agency streets used for Project detour and construction vehicle purposes is estimated at \$98,950. If it is determined the resurfacing is going

to exceed the estimate, State and Agency shall meet to mutually agree upon an estimate and the responsibility of each Party to cover costs.

6. ODOT shall, upon approval of resolution, be responsible for permitting and controlling access control to Springbrook Road. As part of this Project, existing approach roads (Driveways) will be permitted by State by the date the Project is completed. Any new requests for access to the roadway will be addressed through State's established permitting process at the Region 2, District 3 Permit Office.
7. State shall maintain the roadway pavement surfaces, curbing, signal detector loops, signs, and striping upon Springbrook Road between the back of curb to back of curb between OR 219 to OR 99W until construction of the eastern phase of the Newberg-Dundee Bypass is completed and eliminates the temporary routing by the Bypass upon Springbrook Road.
8. State shall be responsible for and pay to the power company 100 percent of the power costs for the traffic signals. State shall require the power company to send invoices directly to State.
9. State shall provide Agency accurate as-built construction plans of the street, storm drainage, waterworks, and wastewater improvements to be maintained by Agency, upon completion of the Project.
10. State shall file a survey and set property corners upon completion of the Project.
11. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
12. State shall, upon signal turn on and proper operation, perform all necessary inspection and maintenance of traffic signals on Springbrook Road, including those at OR99W and OR219, and at the intersection of OR219 and Everest Street control the timing established for operation of the traffic signals as well as interconnection, at no cost to Agency.
13. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on Agency right of way.
14. As stated in Exhibit B, State agrees to monitor the performance of the local street network and, if traffic that is bound for Wilsonville Road eastbound or traffic bound to the Bypass from Wilsonville Road westbound causes a failure of an intersection of a quantifiable safety problem State shall work with the Agency to determine the appropriate remedy. The remedy shall be forwarded through all appropriate approvals and be advanced immediately as a project for final design and construction.

15. State's Project Manager for this Project is Kelly Amador, 885 Airport Road SE, Building P, Salem, Oregon 97301-4788; (503) 986-2900, Kelly.L.Amador@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice, or at such later date as may be established by State or Agency, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within thirty (30) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Agency may terminate this Agreement effective upon delivery of written notice, or at such later date as may be established by Agency or State, under any of the following conditions:
 - a. If State fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If State fails to perform any of the other provision of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within thirty (30) days or such longer period as Agency may authorize.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS [30.260](#) ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS [30.260](#) to [30.300](#), if State had sole liability in the proceeding.
7. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS [30.260](#) to [30.300](#), if it had sole liability in the proceeding.
8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties,

notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

10. This Agreement and attached exhibits, and Agreement No. 29496 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

This Project is in the 2010-2013 Statewide Transportation Improvement Program, Key #17099 that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

Signature Page Follows

City of Newberg/ODOT
Agreement No. 28658

CITY OF NEWBERG, by and through its
designated officials

BY AUTHORITY OF RESOLUTION NO. 2016-_____

By _____
Mayor

Date _____

By _____
City Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
City Attorney

Date _____

Agency Contact:

Kaaren Hofmann, City Engineer
City of Newberg
P.O. Box 970
414 E. First Street
Newberg, Oregon 97132
(503) 537-1223
Kaaren.hofmann@newbergoregon.gov

State Contact:

Kelly Amador, Senior Project Leader
ODOT Region 2, Area 3
455 Airport Road SE, Building P
Salem, Oregon 97301- 4788
(503) 986-2900
Kelly.L.Amador@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____

By _____
State Traffic Engineer

Date _____

By _____
State Right of Way Manager

Date _____

By _____
Region 2 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

Exhibit B



Oregon

Kate Brown, Governor

Department of Transportation

Office of the Director

355 Capitol St NE

Salem, OR 97301

January 4th, 2016

Newberg Planning Commission Chair Gary Bliss
414 East First St.
Newberg Oregon, OR 97132

Subject: Wilsonville Road Impacts

Dear Chairman Bliss,

At the December 10, 2015 Planning Commission hearing, there was significant discussion about the level of mitigation that might be required after the completion of the “no through” intersection currently under consideration by the Commission. In the ODOT submission of the Transportation System Plan (TSP) amendment, the following statement was made:

“ODOT commits, with the City’s assistance, to continue, to monitor the performance of the local street network along the Bypass route. If deficiencies above the anticipated impact of this amendment are identified, ODOT further commits to pursuit of a project as appropriate mitigation for that impact”.

There was much speculation about the actual projects that would result from the commitment. ODOT continues to believe that the marginal impacts between the design currently in the TSP and the proposed modification will be relatively small. We cannot, however, predict where those impacts might occur. I will expand on what is meant by the commitment.

If the traffic that is bound for Wilsonville Road eastbound or to the Bypass from Wilsonville Road westbound is causing a failure of an intersection, or a quantifiable safety problem, ODOT would work with the City to determine the appropriate remedy for that specific failure. The remedy would be forwarded through all appropriate approvals and be advanced immediately as a project for final design and construction. Overall Phase 1 project saving will be used to fund these improvements. Right now we expect the savings to range from between \$3.0 and \$6.5 million.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Garrett".

Matthew L. Garrett
Director

REQUEST FOR COUNCIL ACTION

Date of Council Meeting: February 1, 2016				
Order ___ No.	Ordinance ___ No.	Resolution ___ No.	Motion ___	Information <u>XX</u>
SUBJECT: Forward Looking Calendar, Municipal Court Amnesty Program			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 Newberg Municipal Court and Sherwood Municipal Court are offering a one-time only amnesty program to forgive a portion of overdue fines owed when you pay in full between February 15, 2016 and May 15, 2016.

To participate in this program, you must follow the guidelines below:

- Overdue fines are defined as those that are currently under suspension status and/or have been sent to the collection agency. Cases with restitution owed and criminal cases are excluded.
- You will receive half off / fifty-percent (50%) of the total balance due. Reductions will not be given for partial payments.
- Payment must be in the form of cash, money order, cashier’s check, Visa or Mastercard. Payments can be made in person, via mail or taken over the phone.
- Driver license reinstatement papers will be given at the time of payment in full. You may also be subject to a \$75.00 fee payable to the DMV to reinstate your driver license.

Please direct all questions & inquiries to:

Newberg Municipal Court

**401 E 3rd Street
Newberg, OR 97132
(503) 537-1241**

Sherwood Municipal Court

**22560 SW Pine Street
Sherwood, OR 97140
(503) 625-4225**

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

**NEWBERG CITY COUNCIL
2016 FORWARD LOOKING CALENDAR**

Tuesday, February 16, 2016

Work Session on Statement of Economic Interest Electronic Filing in 2016
Resolution 3254 Contract with Tualatin Valley Fire & Rescue
Ordinance 2795 College Street Local Improvement District

Monday, March 7, 2016

Work Session on Urban Forestry Program
Presentation on Cultural District Report
Presentation on Sportsman Airpark
Committee appointments for Planning & Traffic Safety Commissions
Resolution 3255 To hire a Tourism Consultant
Public Hearing & Resolution: Administrative public hearing for utility rates
Ordinance 2794 Transportation System Plan amendment for Wilsonville Road
& Newberg Dundee Bypass

Monday, March 21, 2016

Work Session – Committee Reports
Ordinance: Recreational Marijuana Producers and Processors – time, place and manner

Monday, April 4, 2016

Work Session – Design Star Kids presentations