



**CITY COUNCIL AGENDA  
APRIL 4, 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. PROCLAMATIONS**

1. Proclamation National Telecommunicators Week April 10-16 Pages 1-3

**V. PRESENTATIONS**

1. Waste Management Operations Annual Report by Dave Huber  
2. Chehalem Valley Chamber of Commerce Annual Report by Sheryl Kelsh Pages 4-7  
3. Pat Haight

**VI. CITY MANAGER'S REPORT**

**VI. PUBLIC COMMENTS**

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

**VII. CONSENT CALENDAR**

1. Minutes from March 7 and March 14, 2016 Pages 8-16  
2. Resolution 2016-3270, A Resolution authorizing the City Manager Pro Tem to appoint recommended candidate to a position in Public Works Operations Pages 17-20  
3. Resolution 2016-3255, A Resolution awarding a contract to Lookout for the Development of a Tourism Strategy for the City of Newberg Pages 21-33  
4. Resolution 2016-3272, A Resolution to authorize the City Manager Pro Tem to enter into a construction contract with the Saunders Company Inc. for the Aquarius St. Wastewater lateral replacement project in the amount of \$148,030.50. Pages 34-36

**Agenda continued on next page**

The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

**VIII. PUBLIC HEARING, CONTINUED - LEGISLATIVE**

1. Ordinance 2016-2798, An Ordinance amending the Newberg Development Code regarding Recreational Marijuana producers and processors; and declaring an emergency Pages 37-98

**IX. PUBLIC HEARING, QUASI-JUDICIAL**

1. Ordinance 2016-2799, An Ordinance annexing property located at 4016 N College Street, Yamhill County Tax Lot 3208-02900, into the Newberg City limits and withdrawing it from the Newberg Rural Fire Protection District, and changing the current zoning from Yamhill County VLDR-1 to City R-1 Pages 99-147

**X. NEW BUSINESS**

1. Marijuana Tax Pages 148-169
2. Resolution 2016-3265, A Resolution updating performance standards, evaluation processes and position descriptions for charter position employees Pages 170-199
3. Resolution 2016-3282, A Resolution suspending the Fire Fee authorized by Resolution No. 2004-2509 from July 1, 2016 until further action by the Council Pages 200-201

**XI. COUNCIL BUSINESS**

1. Discussion of District 4 Appointment

**XII. EXECUTIVE SESSION PURSUANT TO ORS 192.660 (2) a (Employment of Officers)-**

1. City Manager Recruitment

**XIII. 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.**

The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: April 4, 2016**

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

**SUBJECT: Approve a proclamation declaring April 10-16, 2016, as National Public Safety Telecommunicator Week**

**Contact Person (Preparer) for this Motion: Mary Newell, Support Services Manager  
Dept.: Police Department  
File No.:**

**RECOMMENDATION:** Approve a proclamation declaring April 10-16, 2016 as National Public Safety Telecommunicators Week.

**EXECUTIVE SUMMARY:** The Newberg-Dundee Communications Center joins other 9-1-1 communications centers across the nation in celebrating the week of April 10-16, 2016, as National Public Safety Telecommunicators Week. Each year, during the second week of April, the Association of Public Safety Communications Officials (APCO) International honors the thousands of men and women who respond to emergency calls, dispatch emergency police, fire and EMS responders, and provide life saving assistance to citizens throughout the United States.

At their meeting on September 8, 2015, the Newberg City Council expressed continuing support for maintaining the 9-1-1 dispatch center in Newberg. Currently, the Center has six trained personnel, with three trainees. There is one unfilled vacancy.

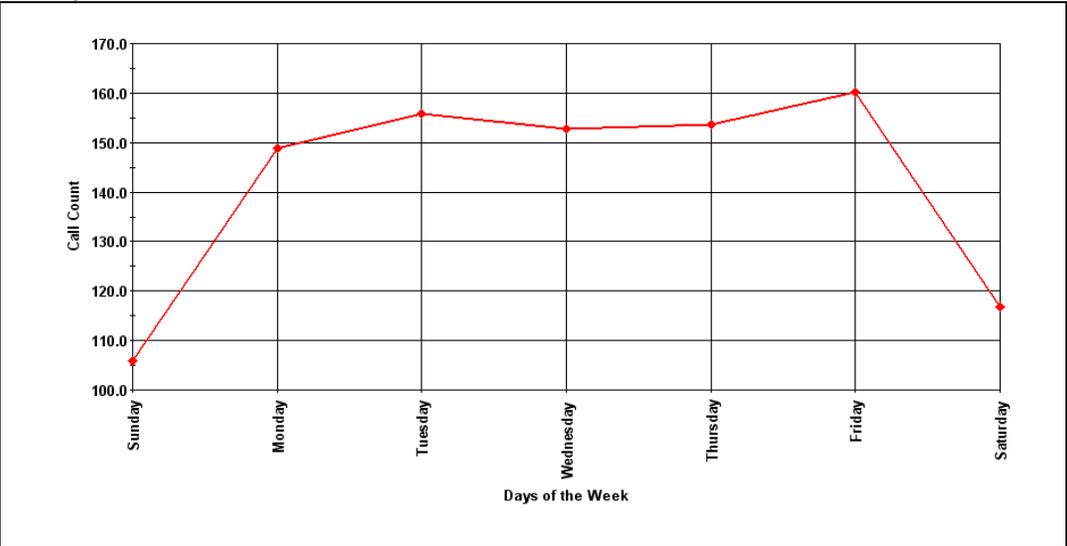
Newberg-Dundee Communications is committed to serving the 34,000 citizens within its PSAP boundary, approximately 34% of the population of Yamhill County. During 2015, the Newberg-Dundee Communications center answered 53,064 telephone calls, of which 13,697 were 9-1-1 and emergency calls.

## 2015 Call Distribution Summary

Call Type	Count	Percent of Total
<b>All Calls</b>	72033	
<b>Inbound Calls</b>	53064	73.7%
<b>Land Line Calls</b>	43326	60.1%
<b>Abandoned Land Line Calls</b>	249	0.3%
<b>Wireless Calls</b>	8511	11.8%
<b>Abandoned Wireless Calls</b>	978	1.4%
<b>Hit Calls</b>	0	0.0%
<b>Outbound Calls</b>	18969	26.3%

Abandoned calls are calls that are routed to the PSAP but disconnects before the telecommunicator can determine if assistance is needed. Newberg-Dundee 9-1-1 Center attempts a call back of all abandoned calls to make this determination.

### Daily Call Center Overview



With the advent of the contract with TVF&R, effective July 1, 2016, the Newberg-Dundee 9-1-1 Center will no longer provide dispatching services for Newberg Fire and EMS, though they will continue to answer the 9-1-1 calls coming into the center. These calls will be transferred to WCCCA for dispatch and EMD, should EMD be necessary.

**FISCAL IMPACT:** None

**STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):** With great appreciation and gratitude, we recognize and celebrate the hard work of these largely unseen professionals who work in tandem with police, fire and EMS to ensure the safety and security of our citizens.



## PROCLAMATION

### **A PROCLAMATION DECLARING APRIL 10-16 2016, AS NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK**

*WHEREAS*, emergencies can occur at any time, requiring police, fire or emergency medical services; and

*WHEREAS*, when an emergency occurs the prompt response of police officers, firefighters, and paramedics is critical to the protection of life and preservation of property; and

*WHEREAS*, the safety of our police officers and firefighters is dependant upon the quality and accuracy of information obtained from citizens who telephone the Newberg-Dundee Communications Center; and

*WHEREAS*, public safety dispatchers are the single vital link for our law enforcement and fire personnel by monitoring their activities by radio, providing them information and ensuring their safety; and

*WHEREAS*, public safety dispatchers are the first and most critical contact our citizens have with emergency services and their duties are seldom observed by the public; and

*WHEREAS*, recognizing the City of Newberg considers the services of the public safety dispatchers to be vital to the interest of the community.

*NOW, THEREFORE, IT IS PROCLAIMED* by the Mayor and City Council of the City of Newberg, Oregon, the week of April 10–16, 2016, to be National Public Safety Telecommunicators Week in Newberg, and all residents of the City of Newberg are invited to observe this event.

**IN WITNESS WHEREOF**, I have hereunto set my hand and cause the Seal of the City of Newberg to be affixed on this \_\_\_\_ day of April, 2016.

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Bob Andrews, Mayor

# THE CHEHALEM VALLEY VISITOR CENTER

2015-16 Second Quarter Report

2015-16 SECOND QUARTER STATS

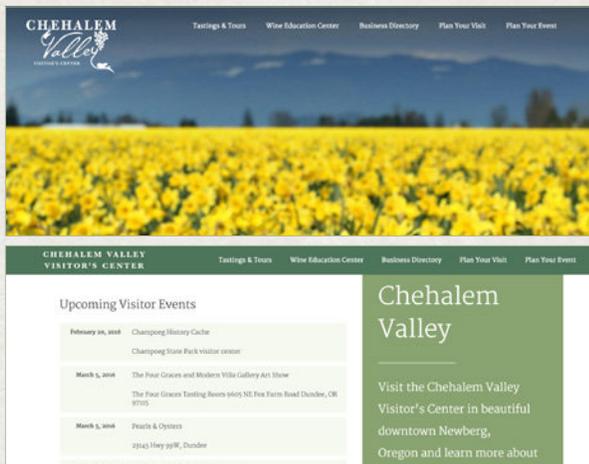
Web Visits: 4,763

Visitor Center Traffic: 2,970

## Chamber Launches New Website: [visit.chehalemvalley.org](http://visit.chehalemvalley.org)

New site markets the Newberg area to Willamette Valley visitors

The Chehalem Valley Chamber launched a new and improved visitor-centric website that includes extensive tourism related content. The technology in the calendar section provides the opportunity to promote events from throughout the area and allows us to separate chamber-related events to the business side of the website. The site includes suggested itineraries and now includes a section for event planning in wine country.



## Legislature to Consider Doubling Statewide Lodging Tax

If approved, there could be approximately \$12 million per year for statewide tourism investments through 2021

One-hundred percent of statewide Oregon lodging tax goes towards funding tourism investments. For every \$1 Travel Oregon invests in advertising, \$237 is generated in tourism spending and \$11 in tax revenue goes to benefitting Oregon residents.

The movement to increase the statewide lodging tax started because Eugene is tentatively securing the 2021 IAAF (International Association of Athletics Federations) World Championships. The event is the largest sporting event in the world in the year 2021; even larger than the Super Bowl in attendance. It is the third-largest sporting event in the world (behind the Olympics and World Cup). If secured, the event will be the biggest sporting event in Oregon's history.

Although the World Championships event in Eugene is exciting for all of Oregon, increasing the Statewide Lodging Tax from 1% to 2% goes far beyond this one event. The legislation would fund up to \$20 million of the \$150 million endeavor. The balance of the funding would be raised locally between now and the 2021 games.

If the statewide tax increase is approved by the legislature, over the next four years, there will be approximately \$12 million per year for statewide tourism investments outside of international promotions for the World Track Championships.

# THE CHEHALEM VALLEY VISITOR CENTER

2015-16 Second Quarter Report

## Oregon Wine Education Center Hires New Director

*Local author is sixth-generation descendant of Oregon Wagon Trail Pioneers*

Kerry McDaniel Boenisch—who grew up in Dundee on one of the first commercial vineyards in Oregon and is the author of the wine history book “Dirt+Vine=Wine”—has been hired by the Chehalem Valley Chamber of Commerce to direct the Oregon Wine Education Center (OWEC). She replaces former director Kailyn Kent, who is attending graduate school.



Kerry has a degree in English and Journalism from the University of Oregon and is a sixth-generation descendant of Oregon Wagon Trail Pioneers. Besides establishing her family winery McDaniel Vineyards, now Torii Mor Winery, she has spent twenty-five years working in the wine industry, including Argyle and Rex Hill Winery. She is currently writing her third book.

The OWEC is a collaboration that includes the Chehalem Valley Chamber of Commerce CEO Sheryl Kelsh and Board members Carr Biggerstaff and Emily Weichold. Local wine industry professionals are also contributing to the curriculum. The OWEC was recently awarded a grant from Travel Oregon to expand wine education and training curriculum.

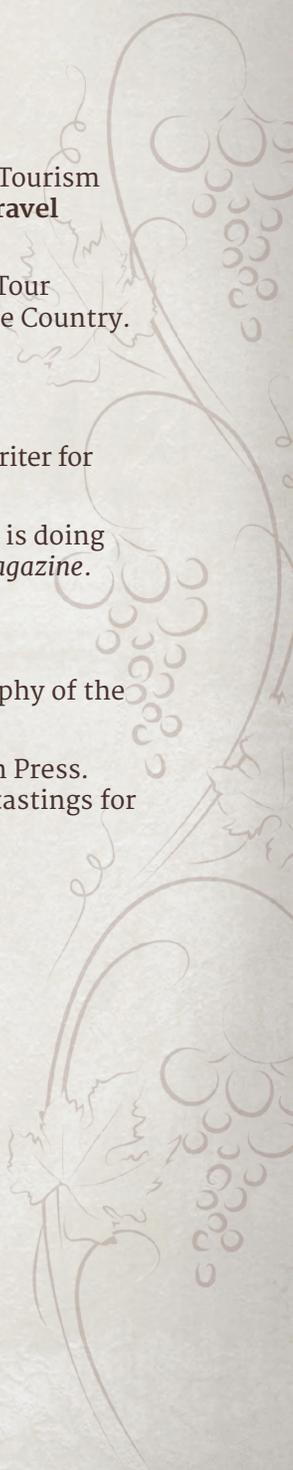
Kerry will develop the curriculum for the 2016 class schedule, which will include wine education classes for the general public and wine industry employee training. The first class, Tasting Room Associate Course (TRAC), is open for registration on the website at [www.wineeducation.chehalemvalley.org](http://www.wineeducation.chehalemvalley.org).

There will be additional wine education classes offered throughout the year, including additional TRAC courses, wine marketing and branding, and regional food and wine pairings developed for specific AVA's and terroir.

# THE CHEHALEM VALLEY VISITOR CENTER

2015-16 Second Quarter Report

## Second Quarter Tourism Promotion Summary

- 
- |          |  |
|----------|--|
| October  | <ul style="list-style-type: none"><li>2 Coordinate FAM tour for Top Sales Agents for <i>Compagnies Du Monde</i>, a French Tourism company that is launching new group tours to Oregon in collaboration with <b>Travel Oregon</b>. Coordinate itinerary for October 23, 2015.</li><li>12 Provide information for <b>Travel Oregon</b> and Jaz Roy, who represents an Asian Tour Operator. Assist with tour planning and budget for group tour package to Wine Country.</li><li>13 Provide input for <i>Willamette Valley to Walla Walla Wine Trail</i> to <b>Travel Oregon</b>.</li></ul> |
| November | <ul style="list-style-type: none"><li>4 Coordinate requested changes in lodging, meals, wine tasting and massage for writer for <i>Travel + Leisure</i> scheduled for November 15th and 16th.</li><li>23 Respond to call-out for FAM Trip coordination for writer Monica Tischler who is doing tourism piece on Oregon Wine Country in the American Airlines' <i>Directions Magazine</i>. Tour is scheduled for January 4th.</li></ul>   |
| December | <ul style="list-style-type: none"><li>1 Alaska Airlines' <i>Directions Magazine</i>—Writer John Gottberg defines the geography of the Willamette Valley and describes Newberg as <i>the Heart of Oregon Wine Country!</i></li><li>22 Respond to call-out for FAM tour coordination for 9 members of the European Press. Rooms reserved at <b>The Allison</b>. Working on private winemaker's dinner and tastings for January 24, 2016.</li></ul>   |

# THE CHEHALEM VALLEY VISITOR CENTER

2015-16 Second Quarter Report

## Budget: Q2 October-December, 2015

	Q2	YTD 2015-16	BUDGET
<b>REVENUE:</b>			
City of Newberg	\$34,250.01	\$68,500.02	\$137,000.00
City of Dundee	\$0	\$0	\$2,500.00
<b>TOTAL REVENUES:</b>	\$34,250.01	\$68,500.02	\$139,500.00
<b>EXPENSE:</b>			
Personnel	\$15,157.59	\$30,645.55	\$62,000.00
Marketing	\$11,088.15	\$24,618.15	\$40,000.00
Overhead/Utilities, etc.	\$17,152.95	\$32,674.39	\$47,979.00
<b>TOTAL EXPENSES:</b>	\$43,398.69	\$87,938.09	\$149,979.00
<b>NET INCOME:</b>	<b>-19,438.07</b>		

Note: Chehalem Valley Chamber is responsible for tourism expenses beyond the scope of budgeted revenues.

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: April 4, 2016**

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

**SUBJECT: Minutes**

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

**RECOMMENDATION:**

Approve City Council minutes from March 7, 2016.

**NEWBERG CITY COUNCIL MINUTES  
REGULAR SESSION  
MARCH 7, 2016, 7:00 PM  
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)**

The work session was held at 6:00 p.m. preceding the meeting. Present were Mayor Bob Andrews, Councilors Lesley Woodruff, Stephen McKinney, Scott Essin, Denise Bacon, Mike Corey and Tony Rourke. Also present were City Manager Pro Tem Stephen Rhodes, City Attorney Truman Stone, Deputy City Recorder Dawn Karen Bevill, Finance Director Matt Zook, Community Development Director Doug Rux, Human Resources Director Nancy McDonald, Code Enforcement Officer Brad Allen, and City Engineer Kaaren Hofmann.

**REVIEW OF COUNCIL AGENDA:**

Councilor McKinney requested Resolution 2016-3269 be pulled from the Consent Calendar and voted on separately. It was added to New Business.

**COUNCIL ITEMS:** Mayor Andrews had two items under Council Business.

**WORKSHOPS:**

CDD Rux presented information on the Urban Forestry Management Program and Heritage Tree Program. He explained the definition of an urban forest, its relevance and related planning issues. A Heritage Tree Program was different in how it recognized significant trees in the urban environment. There were considerations including recorded deed restriction, standards for maintenance of the trees, designating on private property with the consent of the property owner, designating public trees, and plaques for trees. Councilor Essin asked if the Heritage Tree Program was something they wanted to pursue. CDD Rux said it was a voluntary program where people nominated trees. They would have to determine the body that would review the application. There was an issue with street trees in planter strips and needing to put the right tree in the right place. Councilor Essin said the City spent a lot of money dealing with street tree damage. He thought planning ahead for trees in the City was a better option. He was in favor of moving forward with creating these programs.

Mayor Andrews asked for a recommendation of how to proceed. CDD Rux replied a Heritage Tree Program would be easier to develop than a full Urban Forestry Management Plan. The Heritage Tree Program was voluntary and could be a first step. Not all cities had Urban Forestry Management programs but had different pieces to address issues instead of an overall plan. He said if they considered a full Urban Forestry Management Plan, there was significant cost and staffing needs. Councilor Essin suggested getting volunteer groups to do the research and inventory.

CMPT Rhodes discussed filling the District 4 vacancy with the resignation of Councilor Rourke. Applications could be submitted from March 14 to March 28 and Council would discuss next steps on April 4.

Mayor Andrews announced April 18<sup>th</sup> there would be a joint Council meeting with the Yamhill County Board of Commissioners at 5 p.m., a Town Hall meeting and business session at 7 p.m. He said the Confederated Tribes of Grand Ronde presented ODOT with a \$2 million check to contribute to construction of the Newberg-Dundee Bypass.

The work session was adjourned at 6:47 p.m.

**CALL MEETING TO ORDER**

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

**ROLL CALL**

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

Staff Present:	Stephen Rhodes, City Manager Pro Tem	DawnKaren Bevill, Deputy City Recorder
	Truman Stone, City Attorney	Les Hallman, Fire Chief
	Doug Rux, Community Development Director	Matt Zook, Finance Director
	Nancy McDonald, Interim HR Director	Jessica Pelz, Associate Planner

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was performed.

**CITY MANAGER PRO TEM'S REPORT:** CMPT Rhodes said there was a question at the last Council meeting about the drainage facilities on College Street. Staff looked at them would be evaluating them further and return to Council with more information. The City received 72 applications for the City Manager position and there were some strong candidates from the west coast. This item would be brought to the Council on March 14.

Interim HR Director Nancy McDonald presented an award from CIS for 30 years of continuous membership.

**COMMITTEE APPOINTMENTS:**

**MOTION: Andrews/Bacon** moved to appoint Ron Wolfe to the Planning Commission for a term expiring December 31, 2016, and Sarah Sand to the Traffic Safety Commission for a term expiring December 31, 2018. Motion carried (7 Yes/ 0 No).

**CONSENT CALENDAR:**

**MOTION: Rourke/Corey** moved to approve Resolution 2016-3259, A Resolution authorizing the City Manager Pro Tem to appoint the recommended candidate Michael Grimes to a position in the Engineering Services Department and to approve an Oregon Liquor Control Commission Limited On-Premises Sales Permit for Vino Oregon, Inc. dba Newberg Family Market. Motion carried (7 Yes/ 0 No).

Resolution 2016-3269:

Councilor McKinney would not support the resolution. The State received considerable correspondence that citizens were not happy with the significant expense of the intersection at Adolf Road. It would cost anywhere from \$7 to \$30 million, which was a significant expense for tax payers and caused Newberg traffic disruption. He did not think this change would alleviate the bottleneck on Dundee Road and would create several other bottlenecks.

Councilor Essin was going to oppose the resolution earlier but his concerns had been addressed. He did not think Wilsonville Road was the problem but the intersection of Highway 99W and Springbrook Road, which had not been addressed. The letter from ODOT said they would monitor the traffic and if there was a problem there would be some mitigation.

**MOTION: Bacon/Woodruff** moved to approve Resolution 2016-3269, A Resolution authorizing Newberg to enter into an agreement of understanding with Oregon Department of Transportation, Yamhill County, City of Wilsonville, Clackamas County, and Ladd Hill Neighborhood Association for resolution of the Oregon 219/Phase 1 Bypass/Wilsonville Road intersection alignment, and directing the Mayor to execute and sign all agreements. Motion passed (6 Yes/ 1 No [McKinney]).

**PUBLIC HEARING - ADMINISTRATIVE:**

Resolutions 2016-3257, 2016-3263 and 2016-3264:

Mayor Andrews opened the hearing and called for any abstentions or conflicts of interest on the part of the Council. There were none.

FD Zook said the Citizens Rate Review Committee evaluated rates every two years and had met from October 2015 to February 2016. He introduced Deb Galardi, Galardi Rothstein Group, who would present the recommendations of the CRRC. She discussed the four objectives of the CRRC and their recommendations. These included: No new debt funding for water and stormwater systems, and limiting additional debt service for the Wastewater Treatment Plant improvements. There was declining water use for both water and wastewater, but costs to provide service did not go down. She discussed Capital Improvement Plans for each system. No additional staff increases were anticipated, but there would be an increase in salaries and benefits. There was ongoing repair and replacement and maintenance costs as well. For the water system, the proposed 3.5% rate increase was a balance to keep rate increase low and to not spend down reserves for future capital improvements. For wastewater, it was recommended to have a 4% rate increase due to increase in debt service. For stormwater, it would be a 9% rate increase to build capacity for future capital improvements.

Ms. Galardi described a typical residential customer bill. It was a flat fee for stormwater at less than \$1 per month. For water and wastewater there was a base fixed cost and a volume cost. The overall bill combined was under 4% the first year and just over 4% the second year, or an increase of \$4.33 in the first year and \$4.92 in the second year. There were other customer classes and the rates varied depending on the class, how much water was used, and how much impervious surface there was. For commercial it was a 4% increase for both 2017 and 2018 and for industrial it was a 5% increase the first year and 4% increase the second year. In comparison to other communities, Newberg was on the upper end. She then discussed the special rate analysis for the non-potable water rate. It was a different system with a single customer and a different level of service. The rate was based on an estimated cost of the capital improvements and there had not been any increase since 2010. The new rate was also based on revised operation and maintenance costs and a capital portion that reflected a lower contribution from the water system. It had been reduced from \$3.52 to \$2.51. She explained the base charge and volume charge for the non-potable water. The total debt service the customer was paying toward the total debt service of the effluent reuse project was 6%, and the rest was being paid back by the potable water and wastewater systems.

FD Zook said the proposed rates were in three separate resolutions, one for stormwater, one for water, and one for wastewater for the next two years. He recommended approval of the resolutions.

Councilor Rourke asked if all the rate increases had been reduced from what was originally recommended by staff and what capital improvement projects were being put off because of it? Ms. Galardi said for wastewater there were many changes to balance capital needs with overall revenue increase. They started closer to 6% and it was sent back with direction to defer projects to bring it down. For water, there were no specific changes to the water projects, but they knew there would be more coming from the Water System Plan update. The wastewater system was the only one that had deferrals. City Engineer Kaaren Hofmann discussed those wastewater projects that would be deferred under the proposal. This included both capacity and inflow and infiltration (I & I) projects.

Councilor Rourke said there had been significant I & I problems this year. Did the deferral delay the issue and would the problem become worse? CE Hofmann explained in the next two years the City was going to try to hit the areas where there was most concern in hopes that it mitigated the issues.

Councilor Woodruff asked about reducing the debt service. Ms. Galardi said there was a refunding of some of the existing debt due to a more favorable interest rate, but within the next two years none of the existing debt would be dropped.

Proponents:

Rick Rogers, Citizen Rate Review Committee Chair, said operational costs were not the issue that it was funding for the capital improvement projects. He encouraged Council to look at master plans coming out in the near future, which would determine where the rates would go for future capital improvements. Regarding non-potable water, there had been one customer since 2008 and the CRRC thought efforts needed to be made to find more customers. Currently there was no agreement with Chehelam Parks and Recreation District and the Committee recommended making an agreement.

Opponents:

Bill Rourke, CRRC Committee member, was retired and none of his retirement income had not increased, however he thought the rates should have been increased more. In years past the City made the decision not to fund capital improvement projects and now they needed to catch up. The proposed rate increases were postponing projects and if approved, would require substantial increases in the future to meet the infrastructure needs. He asked the Council to consider adding funds for those projects that were being deferred, especially the infiltration and inflow projects.

Undecided:

Robert Soppe, Newberg resident, said regarding the non-potable water rates, most of the issue had to do with the water reuse system was expensive and its capacity was not well utilized. He discussed how the system was originally approved. At the time, the Council was assured that the District was comfortable with the situation, especially the rate structure including recovery of capital costs. It was clear now that this was not accurate. The estimated cost of the reuse water at that time was estimated to be \$2.54 per one hundred cubic feet. That was almost identical to what was being proposed that night and he thought the proposed rate was low. The system was not to be constructed until an agreement was reached with potential users, but that was never done and the system was constructed. The Water SDC fund was not covering all of the expenses as it should and the deficit was being made up by the Water fund resulting in some influence on the proposed rates. He urged Council require this be treated as a loan to be repaid by future SDC revenues. In May of 2012,

the Council passed an ordinance that set up a process by which utility rate increases that exceeded the CPI by more than 3% could be referred to the voters. The first time this applied was when rates were raised in May 2014, but the Council failed to designate the portion that was subject to the referral process even though it exceeded the CPI by more than 3%. One of the proposed rates that night exceeded the CPI by more than 3%, but it was not being subjected to the referral process.

FD Zook said no written comments had been received. He recommended approval of the three resolutions. Mayor Andrews closed public hearing at 8:04 p.m.

Deliberation:

Councilor Rourke asked for clarification on what was approved in 2012 regarding the referral to the voters. CA Stone said Mr. Soppe was correct that there was a requirement for a designation of a portion of the increase to be subject to the referral process. He had language to add to the stormwater resolution. Councilor Rourke was not in favor of delaying I & I projects. He suggested adding 1% onto the rate, making it 5%, and using the extra specifically for those projects. Councilor McKinney said sending these things to the voters was a quagmire because it did not allow the City to make the necessary expenditures needed to keep the City going; however, it was important to keep with what previous Councils had decided. He asked if they raised the rate, was there a project that would be implemented. Councilor Essin said in the 2007 Water Management Conservation Plan there was a list of places wastewater could be used and the need for the reuse program. There had been a plan for how the reuse water would be used and expanded.

**MOTION: Essin/Rourke** moved to approve Resolution 2016-3257, A Resolution adopting new monthly water rates for the City of Newberg effective January 1, 2017 and January 1, 2018. Motion carried (7 Yes/0 No).

**MOTION: Rourke/Corey** moved to change Resolution 2016-3263, a Resolution adopting new monthly wastewater rates for the City of Newberg effective January 1, 2017 and January 1, 2018, and add a 1% increase, making it a 5% revenue increase; staff to reallocate rates based on 5%; the extra percent will go to I & I projects dropped from the Capital Improvement list in this rate cycle.

CA Stone said under the Code the Council had the ability to adjust the rates, but if they were higher than those recommended by the Committee, the Council had to send the proposed rates to the CRRC for their reconsideration.

**AMENDMENT TO THE MOTION: Rourke/Bacon** moved to amend the previous motion and to send the revenue increase back to the CRRC for reconsideration on adding the 1% increase to include I & I projects. Motion carried (6 Yes/1 No [Essin]).

Councilor Essin was concerned that raising the rates would not increase the revenue because people would reduce their water usage. Ms. Galardi said embedded in the revenue projections were estimates of declining usage per account for both water and wastewater. She did not expect the change in percentage would be a major change.

CA Stone proposed adding a Section 4 to Resolution 2016-3264 stating that a portion of the rate increase was subject to the rate referral process set out in Newberg Municipal Code 2.15.200. That portion equaled \$0.42 for 2017 and \$0.90 in 2018. This was a referral that notified citizens they had the opportunity to start the initiation process.

**MOTION: Rourke/Bacon** moved to approve Resolution 2016-3264; a Resolution adopting new monthly stormwater rates for the City of Newberg effective January 1, 2017 and January 1, 2018; with the addition of paragraph 4, as follows: A portion of this rate increase is subject to the referral process set out in Newberg Municipal Code 2.15.200. That portion equals \$.42 in 2017 and \$.90 in 2018. Motion carried (7 Yes/0 No).

Mayor Andrews said Stan Halle had some public comments. Mr. Halle, Director of the Ladd Hill Home Owners Association and Chair of the Bypass Impact Committee, said they had been working on a compromise for Wilsonville Road. He commended the leadership of the Newberg Planning Commission, Council, City Manager, and Community Development Director. He was willing to work with all parties to get the rest of the bypass project funded and built as well as suggest mitigation strategies where needed and to make sure the congestion at various intersections was addressed.

**PUBLIC HEARING - LEGISLATIVE:**

Mayor Andrews opened the hearing and called for any abstentions or conflicts of interest on the part of the Council. There were none.

AP Pelz gave the staff report. She said this was a Transportation Plan amendment reflecting proposed changes to the Newberg Dundee Bypass (NBDD) and Wilsonville Road/Highway 219 intersection. It would remove one southbound travel lane and right turn lane on Highway 219 from what was shown in 2013. There would still be two left turn lanes with signage directing cars to the appropriate lane at the Springbrook/Highway 219 intersection and people would have to go over one lane to get to the right turn lane for the bypass. The proposed amendment would facilitate safe and convenient circulation and reduce potential accidents. Staff recommended adoption of the ordinance.

Proponents:

Tim Potter, ODOT Area Manager introduced William Ciz, Consultant, who would discuss the configuration change. He explained the lane reduction. He said it would facilitate traffic movement from Springbrook to Highway 219. While it cut the level of service down in the opening year of the bypass about 10%, it increased safety and traffic operations. It also reduced impacts to buildings in the industrial park between Springbrook Road and the NBDD Bypass by not requiring relocations. It also reduced costs and required fewer right-of-way purchases. There would be a dedicated right turn lane to get onto the bypass. Councilor Essin asked about the cost of the project. Mr. Potter thought it would be around \$7 million.

**MOTION: Corey/Bacon** moved to waive the second reading for Ordinance 2016-2796. Motion carried (7 Yes/0 No).

**MOTION: Corey/Rourke** moved to approve Ordinance 2016-2796, An Ordinance amending the Newberg Transportation System Plan to change the road and lane configuration of southbound Oregon Highway 219 consistent with the refined construction plans for the Phase 1 Bypass; read by total only. Motion carried (7 Yes/0 No).

**NEW BUSINESS:**

Resolution 2016-3266: Councilor Woodruff thanked Councilor Rourke for his service on the Council. Councilor Essin agreed and said they would miss him.

**MOTION: Andrews/Rourke** moved to approve Resolution 2016-3266, A Resolution accepting the resignation of Councilor Tony Rourke, expressing the City's appreciate for his service, declaring a vacancy, and directing staff to advertise for qualified persons for appointment to fill the vacancy (District No. 4 with a term ending December 31, 2018.) Motion carried (7 Yes/0 No).

Mayor Andrews presented Councilor Rourke with a Certificate of Appreciation for his dedication and service to the City.

Resolution 2016-3254:

Fire Chief Les Hallman gave the staff report. This resolution would authorize an Intergovernmental Agreement with Tualatin Valley Fire and Rescue (TVF&R) district to provide fire and EMS services to the City from July 1, 2016 to June 30, 2018. Current Fire and EMS staffing levels were inadequate for the coverage area, population, and demand for services. The City's General Fund did not have the capacity to pay for the immediate need for more staffing and long term needs as population and demand for services would continue to grow. Consolidation of fire and EMS agencies had been proven to be a successful way to overcome these issues. He said TVF&R was a living model of multiple successful consolidations and its Fire District boundary was adjacent to the Newberg fire and EMS coverage area. Staff from the City and district concluded a merger would be beneficial to both agencies. The IGA would give two years for both parties to decide if a permanent merger made sense. TVF&R would solve immediate staffing needs by boosting the City's fire fighter force with an additional 12 fire fighters and would provide use of an updated ladder truck and two updated ambulances. The City would use the fund already dedicated to Fire and EMS and the general fund amount that would have been used for the current level of service. TVF&R were committed to continuing the Newberg Fire traditions and had a strong volunteer program offering opportunities for Newberg volunteers.

Public Comment:

Michael Sherman, Shop Steward for Newberg Fire, said when this consolidation was first discussed there was fear of losing the small town feel and traditions of the Fire Department. The real tradition was their service and they were at a

point that service was unsustainable. This contract gave them the best opportunity to continue and improve. The Fire Department union members supported consolidation.

Alex Salisbury, fire fighter, said volunteer firefighters were out in the community and people did not know the difference between a volunteer and union member. Volunteers made up a large portion of the staffing model in Newberg; however, there had been a decrease in volunteers during the last few years and it was more difficult to fill shifts. He said TVF&R saw the volunteers as an important part of the staffing plan for Newberg and as partners in the success of the merger. TVF&R wanted volunteers to assist on the first line of fire and other emergencies, community events, and saw them as candidates for potential career opportunities. TVF&R staff seemed genuine in their desire to make this work for the volunteers and he looked forward to helping TVF&R make a successful volunteer program. The Volunteer Association supported the consolidation.

Councilor McKinney said the volunteers and what they thought of the merger were important to the Council. Councilor Essin said one of his concerns was to make sure that the importance of the volunteers was not lost and wanted to make sure they were included and that the consolidation would work for them too.

Carr Biggerstaff, representing the Chehalem Valley Chamber of Commerce, said the Chamber voted unanimously to recommend adoption of the resolution. The Chamber understood the agreement would provide the needed staffing, equipment, expertise, and services that the City could not afford to provide without significant added cost to the City and community. The agreement was a trial period and the Chamber did not see a downside risk but only upside potential to the agreement.

Damon Talbot, Newberg citizen, congratulated TVF&R on their social media and he hoped they would also merge Newberg into that. He asked if they would be switching to Washington County's dispatch system and if so if Newberg would be part of their online CAD system where they showed calls in real time. TVF&R had a Pulse Point app that notified responders who knew CPR that there was a 9-1-1 call within a certain distance from them and they could come and start CPR. He hoped they could be a part of that program. He was in support of the consolidation. FC Hallman said they would be switching to the Washington County's dispatch and would be part of the CAD system.

Sue Lamb, Newberg resident, worked for Yamhill County as the County Emergency Manager, however her comments were being made as a city resident. Prior to living in Newberg she had lived in Tualatin and was a taxpayer to TVF&R. She thought consolidation was a good fit for Newberg through her personal experiences and later as an elected official in Tualatin. They were in the community and worked side by side with the City during emergencies. She did not think Newberg would lose its sense of a local fire department and it would strengthen and enhance the service to the City. She encouraged the Council to support the resolution.

Mayor Andrews asked how the consolidation would affect the City's ISO rating. FC Hallman said it would not hurt the rating in the next two years. If they decided to annex into the district, there would be opportunity to improve it.

Mayor Andrews clarified in the executive summary it talked about suspending the City's current fire and EMS equipment fee charge.

Councilor Woodruff asked about staff rotation and how long people were going to serve in Newberg before going to another station. FC Hallman replied the bulk of the Newberg firefighters would be staying. There would only be about seven new firefighters. The Pulse Point program mentioned earlier was just one of the many items that would be brought to Newberg.

Councilor Essin asked how the finances would be negotiated. Would this increase taxes? CMPT Rhodes said it did not increase taxes now but would if the City annexed to the district. That would be negotiated in a separate agreement. The current agreement contained all of the numbers that were negotiated to cover the contract. It was a good deal for Newberg as it would increase the level of service with a minimal investment. Councilor McKinney said it was a manageable investment into a great agreement. They had been assured the personality of Newberg would not evaporate, it would still be their Fire Department, and it would keep the City safe.

**MOTION: Bacon/Woodruff** moved to approve Resolution 2016-3254, A Resolution authorizing the City Manager Pro Tem to negotiate and execute an intergovernmental agreement with Tualatin Valley Fire & Rescue for provision of Fire and Emergency Medical Services. Motion carried (7 Yes/0 No).

The Council took a recess from 9:28 – 9:33 p.m.

**COUNCIL BUSINESS:**

CDD Rux provided information on the manufactured home rehabilitation and repair loan and grant program concept. The Affordable Housing Commission was partnering with Habitat for Humanity to provide funds to the City's trust fund for these repairs. A subcommittee would be formed to discuss the concept further.

Mayor Andrews thanked the marijuana subcommittee for their work. He announced that two parking spots would be dedicated to veterans in the 2<sup>nd</sup> Street parking lot.

**EXECUTIVE SESSION: Pursuant to ORS 192.660 (2) h** Consultation with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

Council entered executive session at 9:45 p.m. and exited executive session at 10:20 p.m.

The Council reconvened the business session at 10:20 p.m.

**MOTION: McKinney/Rourke** moved for Council to authorize the City to negotiate a settlement with Chief Casey up to \$50,000. Motion carried (7 Yes/0 No).

**ADJOURNMENT:** The meeting was adjourned at 10:25 p.m.

**ADOPTED** by the Newberg City Council this 4th day of April, 2016.

**ATTESTED** by the Mayor this \_\_\_\_ day of March, 2016.

\_\_\_\_\_  
Sue Ryan, City Recorder

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



# ***REQUEST FOR COUNCIL ACTION***

**DATE ACTION REQUESTED: April 4, 2016**

<b>Order</b> ___	<b>Ordinance</b> ___	<b>Resolution</b> <u>XX</u>	<b>Motion</b> ___	<b>Information</b> ___
<b>No.</b>	<b>No.</b>	<b>No. 2016-3270</b>		

**SUBJECT: Resolution authorizing the City Manager Pro Tem to appoint the recommended candidate to the position as listed below.**

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

**RECOMMENDATION:**

Adopt **Resolution No. 2016-3270** Authorizing the City Manager Pro Tem to appoint the recommended candidate to the position as listed below.

**EXECUTIVE SUMMARY:**

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

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

The City of Newberg has successfully recruited for the vacant position listed below. The recommended candidate has been vetted through the appropriate hiring procedure for the department as indicated.

**Public Works – Operations**

**Line Items:** 06-5131-431000 and 07-5141-431000

**Plant Mechanic**

**Non-exempt, AFSCME-represented full-time, regular position.**

- Current budget includes funding for this vacant position.
- 24 applicants; 7 interviewed by Craig Pack & Dan Wilson; 3 finalists invited to shadow Sr. Mechanics.
- Public Works Operations has chosen Bradley (Brad) Snethen to fill their vacant Plant Mechanic position. Brad lives in Dundee. His work history includes jobs with the US Postal Service (postal carrier), BBC Steel in Canby (CNC laser operator), Pioneer Pump (CNC operator), and since January 2012 he has worked at Selway Machine Tool as a CNC machine technician repairing very expensive and complex machines. His wide service area takes him from Yakima, WA down to Yreka, CA. Brad is looking forward to coming to work for the City to be closer to home and have more time with his family. Brad’s positive attitude and strong work ethic has the Operations Division excited to welcome him to the team.

**FISCAL IMPACT:**

Funding for this position is in the adopted FY 2015-2016 Budget under the appropriate salary and benefit line item as indicated above.

**STRATEGIC ASSESSMENT:**

This departments is working at less than full-staff capacity; quickly refilling this vacancy is the fiscally responsible solution.



## RESOLUTION No. 2016-3270

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### A RESOLUTION AUTHORIZING THE CITY MANAGER PRO TEM TO APPOINT RECOMMENDED CANDIDATE TO A POSITION IN PUBLIC WORKS OPERATIONS

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#### RECITALS:

1. Reason for Vacancy: This is a full-time regular position vacated recently by Scott Foss who relocated to Eastern Oregon to be closer to family.
2. Recommendations: Interim Human Resources Director McDonald recommends the appointment of the candidate listed as soon as possible.
3. Funding: Position funding is within the FY 2015-2016 Budget and is indicated by the applicable departmental personnel services line items.
4. Manager Pro Tem Appointment: Steve Rhodes was appointed manager pro tem on September 8, 2015, by the city council. He has reviewed the recommendations for hire submitted by the supervisor of the position and recommends the hiring of said candidate to the vacant position. The City Charter, Chapter VIII, Section 34(h) provides the manager pro tem “has the authority and duties of manager, except that a manager pro tem may appoint or remove employees only with council approval”.

#### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

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

Bradley Snethen – Plant Mechanic, Treatment Plants

- **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 5, 2016.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 4<sup>th</sup> day of April, 2016.

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Sue Ryan, City Recorder

**ATTESTED** by Mayor this \_\_\_\_\_ day of April, 2016.

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Bob Andrews, Mayor

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: April 4, 2016**

<b>Order</b> ___	<b>Ordinance</b> ___	<b>Resolution</b> <u>XX</u>	<b>Motion</b> ___	<b>Information</b> ___
<b>No.</b>	<b>No.</b>	<b>No. 2016-3255</b>		

**SUBJECT: Resolution awarding a contract to Lookout for the development of a tourism strategy for the City of Newberg**

**Contact Person (Preparer) for this Motion: Steve Rhodes, City Manager Pro Tem  
Dept.: Administration**

**RECOMMENDATION:**

Adopt **Resolution No. 2016-3255** Authorizing the City Manager Pro Tem to execute a professional services contract with Lookout for the development of a tourism strategy for the City of Newberg.

**EXECUTIVE SUMMARY:**

In November 2015 the City brought together a group of individuals to work with the City on how to allocate the increased revenues resulting from an increase in the Transient Lodging Tax. The Advisory Group consisted of representatives from the Chehalem Valley Chamber of Commerce, local tourism related businesses, residents, the Mayor and City staff.

The group determined that the best approach was to develop a tourism strategy that could be used to guide the investment of funds towards promoting tourism. Pursuant to that approach the staff sent out a proposal letter to three tourism related consultants and requested proposal for the performance of the work. Proposals were received from two firms.

On March 10<sup>th</sup> a subgroup of the Advisory Group interviewed the two firms that had submitted proposals. Based on the interviews the group determined that Lookout was the best firm to work with in developing the tourism strategy for the City of Newberg.

The contract, attached as Exhibit A, provides for the work to commence upon approval of the contract by the Council with completion in June 2016. The contract establishes the compensation at \$48,000 plus expenses for a total not to exceed amount of \$50,000.

**FISCAL IMPACT:**

\$50,000 to be paid out budgeted funds in the Transient Lodging Tax Fund #19.

**STRATEGIC ASSESSMENT:**

A tourism strategy will help to foster and encourage economic development in the community.



## **RESOLUTION No. 2016-3255**

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### **A RESOLUTION AWARDING A CONTRACT TO LOOKOUT FOR THE DEVELOPMENT OF A TOURISM STRATEGY FOR THE CITY OF NEWBERG**

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#### **RECITALS:**

1. On February 1, 2016 staff solicited proposals, by informal letter, from three tourism/marketing consulting firms for the development of a tourism strategy for the City of Newberg.
2. On February 19, 2016 the City received proposals from Lookout and Total Destination Marketing.
3. On March 10, 2016 a subgroup of the Transient Lodging Tax Advisory Group conducted interviews and interviewed both firms.
4. Based on the interviews and background and experience of the firm the subgroup recommended that the City enter into a contract with Lookout for the development of a Tourism Strategy for the City of Newberg.

#### **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City Council does hereby authorize the City Manager Pro Tem to enter into a Professional Services Contract with Lookout for the development of a tourism strategy for the City of Newberg. The contract and work plan is attached as Exhibit A.
2. The amount of the contract shall be not to exceed \$50,000.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 5, 2016.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 4<sup>th</sup> day of April, 2016.

\_\_\_\_\_  
Sue Ryan, City Recorder

**ATTEST** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 201x.

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

AGREEMENT WITH LOOKOUT  
TO PROVIDE CONSULTING SERVICES

THIS AGREEMENT is entered into this day \_\_\_\_ of \_\_\_\_\_, 2016 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Lookout  
Holly Macfee  
16850 Fernwood Dr.  
Lake Oswego 97034  
[holly@lookoutco.com](mailto:holly@lookoutco.com)

Jon-Paul Bowles  
2324 SE Main Street  
Portland, OR 97214  
[jonpaul.bowles@gmail.com](mailto:jonpaul.bowles@gmail.com)

hereinafter called **Consultant**.

**RECITALS:**

1. **City** has need for the services of a **Consultant** to develop a tourism strategy to guide the expenditure of Transient Lodging Tax funds.
2. By authority of NMC 3.25.080, the **City** chose to enter into Agreement using informal solicitation for proposals and chose **Consultant** based on an interview conducted by a subcommittee of the TLT Advisory Group on March 10, 2016. The selection was based on **Consultant's** particular training, ability, knowledge, expertise and experience.

**NOW THEREFORE**, in consideration of mutual promises, covenants and agreements of the parties, it is agreed as follows:

1. **Effective Date and Duration:** This Agreement shall become effective on the date that this Agreement has been signed by every party hereto.

Unless, terminated or extended, this Agreement shall expire when the **City** accepts **Consultant's** completed performance on or before June 30, 2016 whichever date occurs first. This fact notwithstanding, the services of **Consultant** shall be authorized and paid as described in Exhibit "1".

Expiration shall not extinguish or prejudice **City's** right to enforce this Agreement with respect to any breach of a **Consultant** warranty or any fault or defect in **Consultant's** performance that has not been cured.

2. **Termination:** This Agreement may be terminated at any time by mutual, written consent of the parties. The **City** may terminate immediately upon notice to the **Consultant** that the **City** does not have funding, appropriations, or other necessary expenditure authority to pay for **Consultant's** work. The **City** may terminate Agreement at any time for material breach, unless **Consultant** has cured such defect or deficiency within a reasonable period of time following notice of such claim.

3. **Scope of Work:** The **Consultant** agrees to **provide the services provided in the Scope of Work which are Exhibits "1" attached hereto and incorporated by this reference. The Consultant represents and warrants to the City that the Consultant can perform the work outlined in the Scope of Work for the fee proposal amount.**

4. **Compensation:** The **Consultant** agrees to perform the work for a not-to-exceed fee as indicated in their professional fee proposal included in the Scope of Work. The not-to-exceed figure is:

**\$50,000**

The fee will be paid 50% at commencement of contract and 50% at delivery of final plan. The **Consultant** shall not exceed the fee for any task included in the fee proposal amount. If the **Consultant** foresees that the fee is going to exceed the not-to-exceed figure because the task has changed or is outside the scope, the **Consultant** shall notify the **City** in writing of the circumstances with an estimated amount that the fee is to be exceeded. The **Consultant** shall obtain written permission from the **City** before exceeding the not-to-exceed fee amount. If the **Consultant** does work that exceeds the maximum fee amount prior to obtaining the written permission, the **Consultant** waives any right to collect that fee amount.

5. **Additional Work Not Shown within the Scope of**

## Agreement with Lookout

**Work:** If **City** requests or requires work to be done not within the Scope of Work of this project, the **Consultant** shall notify the **City** of such work, provide an estimated fee amount, and obtain written instructions to proceed with work in the form of an Agreement amendment prior to proceeding with work and incurring any costs on behalf of the **City**. If **Consultant** proceeds with work prior to obtaining permission and/or Agreement amendment, the **Consultant** waives any right to collect fees for work performed.

6. **Agreement Documents:** This Agreement consists of this Agreement and any attached and referenced Exhibits. Work is under the sole control of **Consultant**; however, the work contemplated herein must meet the approval of the **City** and shall be subject to **City's** general right of inspection and supervision to secure the satisfactory performance thereof.

7. **Benefits:** **Consultant** will not be eligible for any federal social security, state workers compensation, unemployment insurance, or public employees' retirement system benefits from the Agreement payment except as a self-employed individual.

8. **Federal Employment Status:** In the event any payment made pursuant to this Agreement is to be charged against federal funds, **Consultant** certifies that he or she is not currently employed by the federal government and the amount charged does not exceed his or her normal charge for the type of services provided.

9. **Consultant's Warranties:** The work to be performed by **Consultant** includes services generally performed by **Consultant** in his/her usual line of business. The work performed by the **Consultant** under this Agreement shall be performed in a good and businesses-like manner in accordance with the highest professional standards. The **Consultant** shall, at all times, during the term of this Agreement, be qualified, be professionally competent, and duly licensed to perform the work.

10. **Indemnity:** **Consultant** shall defend, indemnify and hold harmless **City** from and against all liability or loss and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of the **Consultant**, or its officers, employees, subcontractors, or agents under this Agreement.

11. **Independent Contractor:** **Consultant** is not currently employed by the **City**. The parties to this Agreement intend that the **Consultant** perform all work as an Independent Contractor. No agent, employee, or servant of **Consultant** shall be or shall be deemed to be the employee, agent or servant of **City**. **City** is interested only in the results obtained under this Agreement; the manner and means of conducting the work are under the sole control of **Consultant**, however, the work contemplated herein must meet the approval of the **City** and shall be subject to **City's** general right of inspection and supervision to secure the satisfactory performance thereof.

12. **Taxes:** **Consultant** will be responsible for any

federal or state taxes applicable to payments received under this Agreement. **City** will report the total of all payments to **Consultant**, including any expenses, in accordance with the Federal Internal Revenue Service and the State of Oregon Department of Revenue regulations.

13. **Insurance:**

a) **Consultant**, its Subconsultants, if any, and all employers working under this agreement are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires them to provide workers compensation coverage for all their subject workers; or by signing this Agreement, **Consultant** represents that he or she is a sole proprietor and is exempt from the laws requiring workers compensation coverage.

b) **Consultant** will, at all times, carry a Commercial General Liability insurance policy for at least \$1,000,000.00 combined single limits per occurrence for Bodily Injury, Property Damage, and Personal Injury. The **City**, its agents, employees and officials all while acting within their official capacity as such, shall be named as an additional insured on the insurance specified in this paragraph.

c) **Consultant** will, at all times, carry a Professional Liability/Errors and Omission type policy with limits of at least \$1,000,000.00. If this policy is a "claims made" type policy, the policy type and company shall be approved by the City Manager prior to commencement of any work under this Agreement.

d) **Consultant** shall furnish the **City** with Certificates of Insurance upon execution of Agreement. Such Certificates of Insurance evidencing any policies required by this Agreement shall be delivered to the **City** prior to the commencement of any work. A 30-day notice of cancellation clause shall be included in said certificate. The **City** has the right to reject any certificate for unacceptable coverage and/or companies.

Agreement with Lookout

14. **Assignment:** The parties hereto each bind themselves, their partners, successors, assigns and legal representatives of such other party in respect to all terms of this Agreement. Neither party shall assign the Agreement as a whole without written consent of the other.

15. **Ownership of Work Product:** All original documents prepared by **Consultant** in performance of this Agreement, including but not limited to original maps, plans, drawings and specifications are the property of **City** unless otherwise agreed in writing. Quality reproducible records copies of final work product, including digital files of text and drawings shall be provided to **City** at the conclusion or termination of this Agreement. **City** shall indemnify and hold harmless **Consultant** and **Consultant's** independent professional associates or Subconsultants from all claims, damages, losses and expenses including attorney fees arising out of the **City's** use of any instruments of professional service

for purposes outside the scope of this Agreement.

16. **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understanding between the parties. No modification of this Agreement shall be binding unless in writing and signed by both parties.

17. **Notification:** All correspondence and notices related to this Agreement shall be directed to the project manager for the party to whom the correspondence or notice is intended. If directed to the **City:** City of Newberg, P.O. Box 970, Newberg, Oregon 97132, Attn: City Manager. If directed to the **Consultant:** Attn: Holly Macfee and Jon-Paul Bowles at the addresses listed above. Each party shall be responsible for notifying the other of any changes in project manager designation.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above mentioned.

CONSULTANT

CITY OF NEWBERG

By: \_\_\_\_\_  
Name: Holly Macfee  
Title:  
Date:

By: \_\_\_\_\_  
Name: Stephen A. Rhodes  
Title: City Manager Pro Tem  
Date:

By: \_\_\_\_\_  
Name: Jon-Paul Bowles  
Title:  
Date:

*Approved as to Form and Content:*

\_\_\_\_\_  
Truman A. Stone City Attorney



**Proposal for City of Newberg – Strategic Destination Management**  
Submitted by Holly Macfee of Lookout, and Jon-Paul Bowles, Destination  
Development Consultant  
February 19, 2016  
Revised March 20, 2016 with updated timeline

**Objective:** If selected, our team will develop a **Strategic Destination Management Plan** for Newberg that guides how resources should be invested to create and market experiences that enhance the destination, increase visitation and grow your local economy. Our team specializes in tourism strategies that build and maintain a sense of place, create authentic visitor experiences and support local business. We will also provide guidance for creating an organizational structure to implement the plan in a way that benefits local businesses, local government, Main Street and other tourism stakeholders.

**Project Background**

Transient Lodging Tax (TLT) receipts will influence how Newberg develops as a destination. Our planning process helps ensure that TLT funds create a strong return on investment by leveraging Newberg’s unique position as the gateway to one of the most alluring wine country destinations in the nation. Importantly, we will also ensure strong ROI by aligning Newberg’s marketing strategies with entities that *currently* market your area, creating a powerful amplification effect. The organizations, among others, could include the regional destination marketing organization (Willamette Valley Visitors Association), the Oregon Wine Board, area Wine Associations like WVWA, local DMOs and Travel Oregon/Oregon Tourism Commission. This will allow Newberg to leverage mature campaigns, target new and existing audiences, and broadcast content through channels that already reach hundreds of thousands of potential visitors.

Newberg also has the opportunity to create an organizational structure that institutionalizes these relationships – and gives it access to additional funding. This proposal outlines an approach to creating an organizational structure that will sustainably manage and promote Newberg.

## **Approach**

The consulting team proposes a three-part assessment to uncover inputs for how to best create and manage an organizational structure equipped to implement a destination marketing and management plan. The three-part assessment will focus on:

1. Organizational structure – existing local leaders with a stake in Newberg’s tourism development
2. Existing destination marketing efforts – by local lodging properties, wineries, the Chamber, wine associations, etc.
3. Destination management – goals for the destination’s growth, cultivating an authentic sense of place, strategies for maximizing benefit to the local community

Once the assessment is complete, the consulting team will develop a strategic destination development plan that outlines how to create an organizational structure to implement recommendations for destination marketing and development.

## **PART 1: ASSESSMENT**

Primary research will include discussions with the steering committee, local business owners, leaders of heritage organizations, Chamber of Commerce, Main Street officials, area destination marketing organization leaders and local political leadership. The assessment will provide a snapshot of the destination as is, and provide insight into what local stakeholders would like the destination to become. The findings will inform the creation of the strategic plan. The consulting team will also use these interviews as an opportunity to engage local leaders and gauge their potential involvement in the organizational structure that is recommended in the strategic plan.

### **1. Organizational Structure**

#### **Where we are now:**

- Who are the stakeholders currently promoting Newberg?
- How are they using their resources? Where do the resources come from?
- What tourism strategies are guiding the existing players?

#### **Where do we want to go:**

- How can existing resources be better leveraged? What additional resources could a new organizational structure pursue?
- What players are not at the table who should be?
- What role should those stakeholders play in the new organizational structure?
- What types of organizational structures have worked as formal or informal DMOs for comparable towns? (case studies)

## **2. Destination Marketing**

The following review will be conducted and summarized in a Destination Marketing Opportunities section of the Strategic Plan. This document will provide key findings, strategies and recommendations, and will provide a foundation for future marketing efforts for Newberg:

### **Where we are now:**

- What is the current messaging – mainly focused on Newberg, or also the surrounding area?
- What do we know about the profile of the current visitor to Newberg and the area?
- What are Newberg’s tourism assets and experiences? (Of interest: how many current experiences work with tour operators). How should these experiences be prioritized in marketing communications?
- Marketing communications review – what materials (collateral, website, social media, advertising, etc.) are currently being used to promote experiences in Newberg to visitors? How do these materials currently position the destination, and what recommendations can be made to improve these in the short and long term. If very little is currently available, consultant will make recommendations for prioritized building of communication assets.

### **Where we want to go**

- Who is the optimal target audience for future marketing efforts and what are the best channels for communicating Newberg’s message to them?
- Given limited marketing resources, what tourism marketing channels exist that Newberg can leverage to communicate your message, i.e., Travel Oregon, the Regional Destination Marketing Organization, Travel Portland, Oregon Wine Board, etc. Consultant will provide recommendations for content planning models & PR to maximize these relationships.
- What marketing strategies best serve the destination’s goals? Stay another day? Seasonal or shoulder-season marketing?
- We will review available research to help set direction, including the Longwoods Visitor Profile, Full Glass Research on High Frequency High End Wine Buyers, US Travel Association Culinary Tourism research, etc.
- Organizational funding, growth strategies and supplemental funds through state, federal and county programs.

## **3. Destination Management**

### **Where we are**

- How does the visitor perceive their experience in the destination?
- What are the destination’s assets? (Conduct asset mapping)

- How do local businesses and heritage organizations perceive the visitor? What level of customer engagement do they offer?
- What are the “highs and lows” of the visitor experience? What types of experiences should be built on?

#### **Where we want to go**

- Based on visitor preferences and existing assets, what experiences should be developed?
- How can the new organizational structure attain the resources needed to develop those experiences?
- What role exists for local businesses to create new services to fill pent up demand?
- How can county and city leaders co-create a hub and spoke model to encourage visitors to stay and spend in Newberg, and take outdoor recreation and agritourism excursions in surrounding areas?
- What kind of grant structure might be implemented to align local business efforts with this larger effort? Consulting team will advise on different models and best practices in development of grant guidelines and criteria, management and reporting.

## **PART 2: STRATEGIC PLANNING**

The findings from the assessment will be paired with the steering committee’s insight, and the consulting team’s knowledge of best practices in destination marketing and development to create a strategic plan.

The strategic plan will give recommendations for creating a formal or informal DMO (organizational structure) and how to implement marketing and development strategies. To do so, the consulting team will facilitate a session with the steering committee to review the assessment’s findings, draft a framework for the strategic plan, and conduct a brief visioning session.

The strategic plan will include:

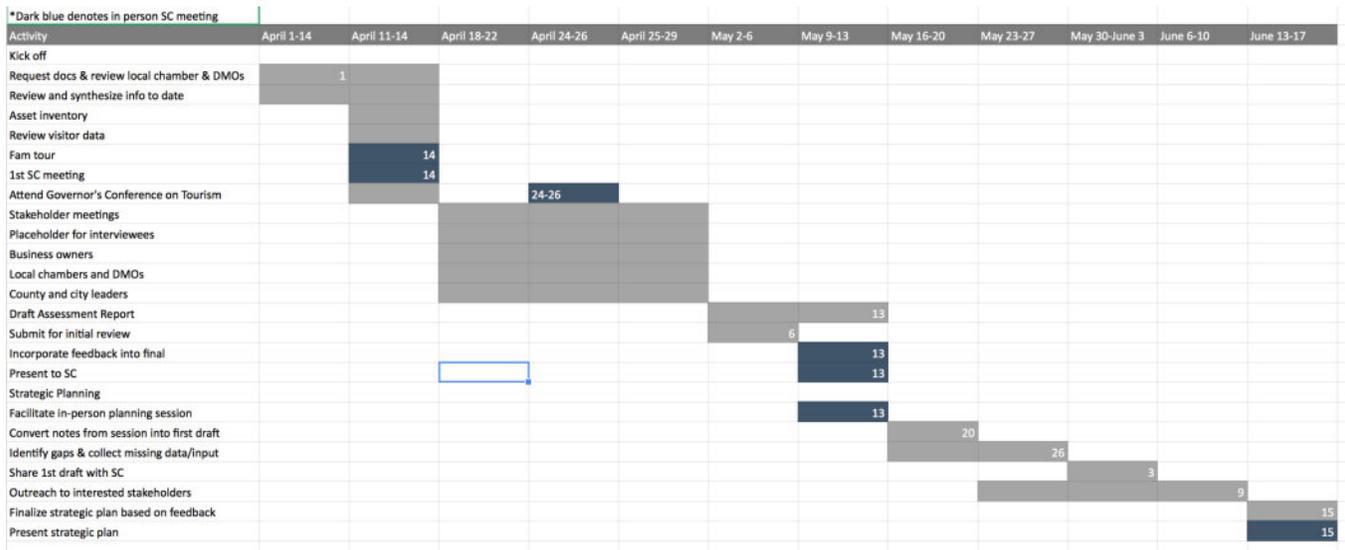
- A draft vision statement that articulates what success looks like in 5 years and 10 years
- Recommendations for organizational structure
- A destination marketing strategy
- A destination management strategy

Once the strategic plan is adopted, the Newberg team will be positioned to create work plans that articulate:

- 1 year – Quick wins to consolidate energy and build momentum

- 2-5 years – to institutionalize the new organizational structure and build on destination marketing and management goals through a grant program and additional fund development
- 6-10 years – ongoing coordination of public and private partnerships that enhance and promote the destination
- **\*\*Note:** Once this plan is finalized, we recommend ongoing engagement with the consulting team for monthly check-ins so we can help advise on strategy and priorities, and keep your momentum going

**TIMELINE:**



**Fee: \$48,000**

Contractors fee covers the work outlined above, which includes:

- Deliverable of a Strategic Destination Management Plan and Strategic Marketing Recommendations
- Introductory meeting with management team to finalize project scope, objectives, and assessment framework
- Meetings with local business leaders, wine associations, the Chamber and other stakeholders who will provide input for the assessment
- In person meeting with management team to present the assessment, conduct SWOT Analysis, draft a 5 and 10 year vision, and discuss framework for strategic plan
- In person presentation of strategic plan to all interested stakeholders: Next steps for organizational development, destination marketing and destination management
- Check-in meetings (phone) as needed, to keep project moving forward

- \*\*Attendance at first implementation meeting; additional ongoing consulting, as desired, would be scoped separately

Fee does not include mileage to and from Newberg from consultant's homes (in Lake Oswego and SE Portland). These will be invoiced at conclusion of the project and will be calculated at the current state rate (.575/mile).

## Project Team Bios

### Jon-Paul Bowles

Jon-Paul Bowles is a native Oregonian who grew up with a deep appreciation of nature and community in rural Oregon. He spent nearly a decade working on sustainable tourism development in the U.S. and abroad, in and around World Heritage sites, and consulting for national and statewide tourism commissions, before returning to his happy fishing and hunting grounds. Since returning to Oregon, Jon-Paul has worked with Travel Oregon and Rural Development Initiatives (RDI) to design and implement programs to grow rural economies through tourism and improved local food systems.

He currently supports destination marketing organizations along the Wild Rivers Coast (Bandon to Brookings), in the mid-Willamette Valley wine country and Oregon's Mount Hood Territory to create tourism product that promotes increased spending at local businesses, especially in shoulder and off-seasons.

He specializes in helping tourism boards, government officials, businesses, non-profits and community groups foster tourism development in a way that builds local economies while maintaining a sense of place. He focuses on the importance of cultural and environmental conservation as engines of economic growth, rather than competing objectives.

Jon-Paul received an M.A. in Public Communication from American University and his B.A. in political science and communication from Furman University.

### Holly Macfee

Holly Macfee is Principal at [Lookout](#), a strategic planning and brand marketing creative consultancy based in Portland, Oregon. Lookout focuses on helping travel destinations define their unique offerings and communicate that experience to the world through strategic marketing planning, inspiring content and breakthrough campaigns.

Through 2014, Holly served as Vice President, Global Brand Strategy for Travel Oregon, the state tourism office. During her 10-year tenure, she helped shape Oregon's voice as a destination, and launched Oregon Bounty, the state's culinary and agritourism campaign, collaborating with winemakers, brewers, ranchers, farmers markets and producers from across the state. [Oregon Bounty](#) is a three-time winner of the coveted Mercury Award from the US Travel Association, twice winning best overall campaign in the country. As creative lead for Travel Oregon, she worked alongside Wieden+Kennedy, to produce the [7 Wonders of Oregon](#), the most successful tourism marketing campaign the state has ever run.

Holly also worked with rural communities helping them build marketing plans as part of [Travel Oregon's Rural Tourism Studio](#), and was the tourism commission lead on the

[Regional Cooperative Marketing Program](#). Prior to Travel Oregon, Holly worked for 16 years for the Walt Disney Company's theme parks and film division in marketing and brand strategy.

Current clients include Travel Oregon, Eastern Oregon Visitors Association, the Oregon Wine Board, Martin Hospitality, Seaside, Grants Pass and Discover Klamath, among others.

# *REQUEST FOR COUNCIL ACTION*

**DATE ACTION REQUESTED: April 4, 2016**

<b>Order ___ No.</b>	<b>Ordinance ___ No.</b>	<b>Resolution <u>XX</u> No. 2016-3272</b>	<b>Motion ___</b>	<b>Information ___</b>
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**SUBJECT: A resolution to authorize the City Manager Pro Tem to enter into a construction contract with The Saunders Company Inc. for the Aquarius St. Wastewater Lateral Replacement Project in the amount of \$148,030.50.**

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

**RECOMMENDATION:**

Adopt Resolution No. 2016-3272 authorizing the City Manager Pro Tem to award the Aquarius St. Wastewater Lateral Replacement project to The Saunders Company Inc. in the amount of \$148,030.50.

**EXECUTIVE SUMMARY:**

Inflow and infiltration (I&I) is a major issue for the city’s wastewater collection system. Infiltration is groundwater that enters the wastewater system through defective pipe joints, broken pipes, manhole walls or root intrusions. I&I reduction over time will reduce the wastewater influent volume into the conveyance system and then for treatment at the city’s wastewater treatment plant, and will produce an overall long term maintenance, operations and energy cost savings for the city.

As a part of the City’s attempt to reduce the I & I, staff determined that the next project should be replacing public wastewater laterals on Aquarius Street that are allowing infiltration into the wastewater system.

This project was advertised for bid on March 7, 2016. The Engineer’s estimate was in the range of \$180,000.00 to \$200,000.00. On March 22, 2016, the city received and opened six qualified bids from:

- (a) CG Contractors LLC. for \$169,200.00;
- (b) Emery & Sons Construction Group for \$184,800.00;
- (c) K&E Excavating, Inc. for \$229,500.00;
- (d) Landis and Landis Construction Inc. for \$160,200.00;
- (e) The Saunders Company for \$148,030.50; and
- (f) Trench Line Excavation, Inc. for \$193,300.00.

The submitted bids are reasonable. The Saunders Company Inc. is the lowest responsible bidder.

**FISCAL IMPACT:**

Funding for construction of the Aquarius St. Wastewater Lateral Replacement Project is under account numbers 04-5150-706301 and 06-5132-538301.

**STRATEGIC ASSESSMENT:**

Replacing the wastewater laterals will prevent further I & I from entering the wastewater system.



## ***RESOLUTION No. 2016-3272***

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**A RESOLUTION TO AUTHORIZE THE CITY MANAGER PRO TEM TO ENTER INTO A CONSTRUCTION CONTRACT WITH THE SAUNDERS COMPANY INC. FOR THE AQUARIUS ST. WASTEWATER LATERAL REPLACEMENT PROJECT IN THE AMOUNT OF \$148,030.50.**

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### **RECITALS:**

1. Infiltration is groundwater that enters the wastewater system through defective pipe joints, broken pipes, manhole walls or root intrusions.
2. I&I reduction over time will reduce the wastewater influent volume into the conveyance system and then for treatment at the city's wastewater treatment plant, and will produce an overall long term maintenance, operations and energy cost savings for the city.
3. As a part of the City's attempt to reduce the I & I, staff determined that the next project should be replacing public wastewater laterals on Aquarius Street that are allowing infiltration into the wastewater system.
4. The City of Newberg advertised the project on the city's website and in the Daily Journal of Commerce on March 7, 2016, soliciting bids in accordance with ORS Chapter 279B.
5. Six qualified bids were received on March 30, 2016. They were from: (a) CG Contractors LLC. for \$169,200.00; (b) Emery & Sons Construction Group for \$184,800.00; (c) K&E Excavating, Inc. for \$229,500.00; (d) Landis and Landis Construction Inc. for \$160,200.00; (e) The Saunders Company for \$148,030.50; and (f) Trench Line Excavation, Inc. for \$193,300.00.
6. The Engineer's estimate was in the range of \$180,000.00 to \$200,000.00.
7. The Saunders Company Inc. is the lowest responsible bidder.

**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The City Council, acting as contract review board for the city, does hereby authorize the City Manager Pro Tem to enter into a construction contract with The Saunders Company Inc. to complete the Aquarius St. Wastewater Lateral Replacement Project in the amount of \$148,030.50.
2. The City Manager Pro Tem, or the City Manager, is authorized to negotiate and approve any needed construction change orders not to exceed 10 percent of the original contract amount.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 5, 2016.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 4<sup>th</sup> day of April, 2016.

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Sue Ryan, City Recorder

**ATTEST** by the Mayor this 6<sup>th</sup> day of April, 2016.

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Bob Andrews, Mayor

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: April 4, 2016**

Order ___ No.	Ordinance <u>XX</u> No. 2016-2798	Resolution ___ No.	Motion ___	Information ___
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**SUBJECT: An ordinance amending the Newberg Development Code regarding recreational marijuana producers and processors; and declaring an emergency**

Contact Person (Preparer) for this Motion: Doug Rux, Director  
Dept.: Community Development  
File No.: DCA-15-003

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

**RECOMMENDATION:**

Adopt Ordinance No. 2016-2798 amending the Newberg Development Code for recreational marijuana producers and processors.

**EXECUTIVE SUMMARY:**

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

- Prohibits Recreational Marijuana Producer as an indoor or outdoor use in R-1, R-2, R-3, R-4, R-P, AR, R-1/PD, R-1/0.1, 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, C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, CC, M-4-C, CF, CF/RF, RF, I, IO, FHO, AI, AIO, H, SC, BI.
- Adds Recreational Marijuana Producer as an indoor permitted use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.
- Adds Recreational Marijuana Producer as a conditional outdoor use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.
- Adds Recreational Marijuana Processor as a permitted indoor use in M-1, M-2, M-3, M-4-I and SD/E.
- Adds Recreational Marijuana Processor as a conditional use in C-2 with a requirement for a 1,000 foot buffer from schools and parks.
- Prohibits Recreational Marijuana Processor in all residential, commercial (except C-2), community facility, institutional, airport industrial and miscellaneous districts and subdistricts.
- Add definitions for Recreational Marijuana Producer and Processor.

**B. BACKGROUND:** The Newberg City Council opened a public hearing regarding Recreational Marijuana Producers and Processors on March 21, 2016. Testimony was provided on allowing Recreational Marijuana Processors as an allowed use in the C-2 District. Specifically the property in question is located on N. Springbrook Road just north of Portland Road. City Council discussed the

request at length and continued the hearing to April 4, 2016. Based on the City Council discussion staff researched the issue of allowing Recreational Marijuana Processors in C-2 as a conditional use with a provision for a 1,000 buffer from schools and parks. The research results are as follows:

1. Attachments 3 and 4 are maps depicting the location of C-2 Districts in Newberg. Attachment 3 is the C-2 District area east of Hess Creek. Attachment 4 is the C-2 District area west of Hess Creek.
2. Attachments 4 thru 6 identify 1,000 foot buffers from schools, parks and a combined schools/parks, respectively.
3. A distance measurement was taken from the site perimeter at 1015 N. Springbrook Road identified as a desired location for a recreational marijuana processing facility to the closest school property boundary. That distance is 968 feet. The distance to the nearest park was 1,794 feet. Depending on how the Oregon Liquor Control Commission would issue a license for a processor at this location (either just for the building footprint or for the entire site) the site may not meet a 1,000 foot separation from a school boundary.
4. A distance measurement was taken from the northern most building on the site at 1015 N. Springbrook Road identified as a desired location for a recreational marijuana processing facility to the closest school property boundary. That distance is 1,077 feet. The distance to the nearest park was 1,883 feet.
5. Staff reviewed the requirements for a conditional use based on the City Council discussion on March 21, 2016. **15.225.060 General conditional use permit criteria – Type III.**

A conditional use permit may be granted through a Type III procedure only if the proposal conforms to all the following criteria:

A. The location, size, design and operating characteristics of the proposed development are such that it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the generation of traffic and the capacity of surrounding streets, and to any other relevant impact of the development.

B. The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping or civic environment, and will be as attractive as the nature of the use and its location and setting warrants.

C. The proposed development will be consistent with this code.

#### **15.225.080 Conditions.**

The hearing body shall designate conditions in connection with the conditional use permit deemed necessary to secure the purpose of this chapter and the general conditional use permit criteria and require the guarantees and evidence that such conditions will be complied with. Such conditions may include:

A. Regulation of uses.

- B. Special yards, spaces.
  - C. Fences and walls.
  - D. Surfacing of parking areas to city specifications.
  - E. Street dedications and improvements (or bonds).
  - F. Regulation of points of vehicular ingress and egress.
  - G. Regulation of signs.
  - H. Landscaping and maintenance of landscaping.
  - I. Maintenance of the grounds.
  - J. Regulation of noise, vibration, odors or other similar nuisances.
  - K. Regulation of time for certain activities.
  - L. Time period within which the proposed use shall be developed.
  - M. Duration of use.
  - N. Such other conditions as will make possible the development of the city in an orderly and efficient manner in conformity with the Newberg comprehensive plan and the Newberg development code.
6. Based on the research conducted staff modified the original recommendation to identify a Recreational Marijuana Processors as a conditional use in the C-2 District with a footnote (38) for a buffer requirement to schools and parks as shown in Exhibit A, Attachment 2 for City Council consideration. The City Council may also want to consider if any C-2 subdistricts (C-2/LU, C-2/PD and C-2/SP) should be considered as a conditional use activity for Recreational Marijuana Processors and have a corresponding 1,000 foot buffer requirement.

The Oregon voters passed Measure 91 on recreational marijuana in November 2014. 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

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 8<sup>th</sup> 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 No. 2015-2787 declaring a ban on the early sale of recreational marijuana by 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 met on December 9, 2015 and discussed initiating a Request for Council Action (RCA) to initiate the Development Code amendment process for place, time and manner regulations for recreational marijuana producers and processors. 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 recreational marijuana producers 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 recreational marijuana producer and processor regulations to bring forward for Council consideration on January 4, 2016.

The City Council adopted Resolution No. 2015-3248 on January 4, 2016 initiating the Development Code amendment process (Attachment 1).

The Subcommittee met again on January 12, 2016 and developed recommendations on recreational marijuana producers and processors.

**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. 1/4/16: The Newberg City Council initiated the Development Code amendment.
2. 2/25/16: After proper notice, the Planning Commission held a legislative hearing to consider the item, took public comment, and approved Resolution 2016-313.
3. 3/21/16: After proper notice, the City Council held a legislative hearing to consider the item and continued the hearing to April 4, 2016.
4. 4/4/16: City Council continued the legislative public hearing to consider the item.

**D. PUBLIC COMMENTS:** As of the writing of this report, the city has received one comment on the application which is included at Attachment 8. 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:** Recreational Marijuana Producers and Processors have certain limitations per HB 3400 and OAR 845-025. HB 3400 states (bracketed and italicized text is deleted and bold text is new).

HB 3400, Section 33 allows local governments to regulate the location of marijuana producer and processor sites. Specifically the law reads:

**(Land Use)**

**SECTION 33.** Section 59, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 59.** *[(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.]*

*[(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.]*

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

**(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.**

Oregon Laws 2015, Chapter 1 as related to Production license and Processor license states:

**SECTION 19.** Production license. (1) The production of marijuana is subject to regulation by the Oregon Liquor Control Commission. (2) A marijuana producer must have a production license issued by the commission for the premises at which the marijuana is produced.

**SECTION 20.** Processor license. (1) The processing of marijuana items is subject to regulation by the Oregon Liquor Control Commission. (2) A marijuana processor must have a processor license issued by the commission for the premises at which marijuana items are processed.

Oregon Administrative Rule, Division 25 provides the following definitions:

**GENERAL REQUIREMENTS APPLICABLE TO  
ALL MARIJUANA LICENSES**

**845-025-1015**

**Definitions**

(38) "Premises" or "licensed premises" includes the following areas of a location licensed under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015:

(a) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;

(b) All areas outside a building that the Commission has specifically licensed for the production, processing, wholesale sale or retail sale of marijuana items; and

(c) For a location that the Commission has specifically licensed for the production of marijuana outside a building, the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases or has a right to occupy.

- (d) "Premises" or "licensed premises" does not include a primary residence.
- (39) "Primary Residence" means real property inhabited for the majority of a calendar year by an owner, renter or tenant, including manufactured homes and vehicles used as domiciles.

Oregon Administrative Rule, Division 25 provides the following on when the Oregon Liquor Control Commission would deny a license application:

**OAR 845-025-1115**

**Denial of Application** (1) The Commission must deny an initial or renewal application if:

- (a) An applicant is under the age of 21 or, until January 1, 2020, has not been a resident of Oregon for at least two years. If the Commission determines that an applicant is a non-resident the Commission will hold that application under review until 30 days after the 2016 Oregon Legislature adjourns.
- (b) The applicant's land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.
- (c) The proposed licensed premises is located:
  - (A) On federal property.
  - (B) At the same physical location or address as a:
    - (i) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon laws 2015;
    - (ii) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or
    - (iii) Medical marijuana dispensary registered under ORS 475.314.
  - (C) At the same physical location or address as a liquor licensee licensed under ORS chapter 471 or as a retail liquor agent appointed by the Commission.
- (d) The proposed licensed premises of a producer applicant is:
  - (A) On public land; or
  - (B) On the same tax lot or parcel as another producer licensee under common ownership.
- (e) The proposed licensed premises of a processor who has applied for an endorsement to process extracts is located in an area that is zoned exclusively for residential use.

Oregon Administrative Rule, Division 25 states the following on restrictions:

**OAR 845-025-1230**

**Licensed Premises Restrictions and Requirements** (1) A licensed premises may not be located:

- (a) On federal property; or
- (b) At the same physical location or address as a:
  - (A) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon Laws 2015;
  - (B) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or
  - (C) Medical marijuana dispensary registered under ORS 475.314.
  - (D) Liquor licensee licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission.
- (2) The licensed premises of a producer applicant may not be on:
  - (a) Public land; or

(b) The same tax lot or parcel as another producer licensee under common ownership.

(4) The licensed premises of a processor who has an endorsement to process extracts may not be located in an area that is zoned exclusively for residential use.

(5) The licensed premises of a processor, wholesaler, laboratory and retailer must be enclosed on all sides by permanent walls and doors.

(11) The general public is not permitted in limited access areas on a licensed premises, except for the licensed premises of a retailer and as provided by section (14) of this rule. In addition to licensee representatives, the following individuals are permitted to be present in limited access areas on a licensed premises, subject to the requirements in section (12) of this rule:

(a) Laboratory personnel, if the laboratory is licensed by the Commission;

(b) A contractor, vendor or service provider authorized by a licensee representative to be on the licensed premises; (c) Another licensee or that licensee's representative;

(d) Up to seven invited guests per week subject to requirements of section (12) of this rule; or (e) Tour groups as permitted under section (14) of this rule.

(12) Prior to entering a licensed premises all visitors permitted by section (11) of this rule must be documented and issued a visitor identification badge from a licensee representative that must remain visible while on the licensed premises. A visitor badge is not required for government officials. All visitors described in subsection (11) of this rule must be accompanied by a licensee representative at all times.

Oregon Administrative Rule, Division 25 states the following on recreational marijuana producers:

## RECREATIONAL MARIJUANA PRODUCERS

### OAD 845-025-2000

**Definitions** As used in OAR 845-025-2000 to 845-025-2080:

(1) "Canopy" means the surface area utilized to produce mature marijuana plants calculated in square feet and measured using the outside boundaries of any area that includes mature marijuana plants including all of the space within the boundaries.

(2) "Indoor production" means producing marijuana in any manner:

(a) Utilizing artificial lighting on mature marijuana plants; or

(b) Other than "outdoor production" as that is defined in this rule.

(3) "Outdoor production" means producing marijuana:

(a) In an expanse of open or cleared ground; or

(b) In a greenhouse, hoop house or similar non-rigid structure that does not utilize any artificial lighting on mature marijuana plants, including but not limited to electrical lighting sources.

HB 3400, Section 14 limits where processing extracts can occur. The law reads:

### (License Holders)

**SECTION 14.** Section 20, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 20.** (1) The processing of marijuana items is subject to regulation by the Oregon

Liquor Control Commission.

(2) A marijuana processor must have a processor license issued by the commission for the premises at which marijuana items are processed. **To hold a processor license under this section, a marijuana processor:**

(a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;

(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;

**(c) If the marijuana processor processes marijuana extracts, may not be located in an area zoned exclusively for residential use;** and

(d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.

(3) The commission shall adopt rules that:

(a) Require a marijuana processor to annually renew a license issued under this section;

(b) Establish application, licensure and renewal of licensure fees for marijuana processors;

(c) Require marijuana processed by a marijuana processor to be tested in accordance with section 92 of this 2015 Act; and

(d) Require a marijuana processor to meet any public health and safety standards and industry best practices established by the commission by rule related to:

(A) Cannabinoid edibles;

(B) Cannabinoid concentrates;

(C) Cannabinoid extracts; and

(D) Any other type of cannabinoid product identified by the commission by rule.

(4) Fees adopted under subsection (3)(b) of this section:

(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana processors; and

(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

HB 3400, Section 34 identifies marijuana as a crop for purposes of farm use, farm, farming practice and as farm product as noted below. This section also requires a land use compatibility statement prior to issuance of any license.

(Land Use)

**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.

(4)(a) Prior to the issuance of a license under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, the Oregon Liquor Control Commission shall request a land use compatibility statement from the city or county that authorizes the land use. The land use compatibility statement must demonstrate that the requested license is for a land use that is allowable as a permitted or conditional use within the given zoning designation where the land is located. The commission may not issue a license if the land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.

(b) A city or county that receives a request for a land use compatibility statement under

this subsection must act on that request within 21 days of:

(A) Receipt of the request, if the land use is allowable as an outright permitted use; or

(B) Final local permit approval, if the land use is allowable as a conditional use.

(c) A city or county action concerning a land use compatibility statement under this subsection is not a land use decision for purposes of ORS chapter 195, 196, 197 or 215.

HB 3400 allows opt-in for medical marijuana grow sites to also produce recreational marijuana. The law reads:

### MEDICAL MARIJUANA GROW SITE OPT-IN OPERATIVE JANUARY 1, 2016

**SECTION 116. (1) A person responsible for a marijuana grow site under ORS 475.304 may apply for a license under section 19, chapter 1, Oregon Laws 2015, to produce marijuana at the address of the marijuana grow site, provided that all individuals registered with the Oregon Health Authority to produce marijuana at the address are listed on the application submitted to the Oregon Liquor Control Commission under section 28, chapter 1, Oregon Laws 2015.**

(2) Notwithstanding any other provision of sections 3 to 70, chapter 1, Oregon Laws 2015, the commission may issue a license under section 19, chapter 1, Oregon Laws 2015, to a person responsible for a marijuana grow site under ORS 475.304 if the person responsible for the marijuana grow site:

(a) Meets any criminal background check requirements established by the commission by rule;

(b) Agrees to be subject to the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, including section 59, chapter 1, Oregon Laws 2015, and section 34 of this 2015 Act, and rules adopted under sections 3 to 70, chapter 1, Oregon Laws 2015, that

**apply to marijuana producers; and**

**(c) Submits proof, in a form and manner prescribed by the commission, of having obtained the permission to apply for licensure under section 19, chapter 1, Oregon Laws 2015, of each individual who holds a registry identification card issued under ORS 475.309 for whom the person produces marijuana at the address of the marijuana grow site.**

**(3) The commission by rule or order may waive the application of any rule adopted under sections 3 to 70, chapter 1, Oregon Laws 2015, to a person responsible for a marijuana grow site that holds a license under section 19, chapter 1, Oregon Laws 2015.**

**(4) A person responsible for a marijuana grow site that holds a license under section 19, chapter 1, Oregon Laws 2015:**

**(a) May not possess more than the amount or number of marijuana plants permitted pursuant to ORS 475.300 to 475.346;**

**(b) Must allow each marijuana plant to be tracked using the system developed and maintained under section 23 of this 2015 Act;**

**(c) May sell immature marijuana plants and usable marijuana in excess of amounts produced for individuals who hold a registry identification card issued under ORS 475.309 to a person who holds a license under section 20, 21 or 22, chapter 1, Oregon Laws 2015, in accordance with rules adopted by the commission; and**

**(d) May transfer marijuana and usable marijuana to other registrants under ORS 475.300 to 475.346 in accordance with rules adopted by the authority.**

**(5) In a form and manner prescribed by the commission, a person responsible for a marijuana grow site that holds a license under section 19, chapter 1, Oregon Laws 2015, may surrender the person's license. If the person surrenders the person's license, the person is no longer subject to the provisions of this section.**

**(6) Notwithstanding ORS 475.331, the authority may provide information to the commission as is necessary for the commission to determine whether a person responsible for a marijuana grow site that holds a license under section 19, chapter 1, Oregon Laws 2015, is in compliance with this section.**

**(7) This section does not prohibit or otherwise restrict the duties, functions and powers of a person responsible for a marijuana grow site as set forth in ORS 475.300 to 475.346, except that the person is not subject to any requirement related to the reporting or tracking of mature marijuana plants and usable marijuana.**

The Newberg Municipal Code states the following regarding horticulture and light manufacturing:

#### **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:

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

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

**Use Categories**

**15.303.100 Agricultural uses.**

The following agricultural uses defined in NMC 15.050.030

- A. Horticulture
- B. Livestock and poultry farming.
- C. Home gardening.
- D. Home livestock and poultry raising. [Ord. 2673 § 1 (Exh. A § 5), 9-16-13.]

**15.303.506 Light manufacturing category.**

- A. Characteristics. Light Manufacturing involve manufacturing, processing, fabrication, packaging, or assembly of goods. These types of firms are involved in the secondary processing and assembly of materials and components into finished products, generally for the wholesale market, for transfer to other plants, or to order for firms or consumers. The external impact from these uses is generally less than heavy manufacturing. Outdoor storage and processing of goods and materials is less than 10 percent of the site. Transportation needs are often met by truck. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site (typically fewer than five per day per 1,000 square feet of floor area).
- B. Accessory Uses. Retail sales of goods produced on site, provided the floor area devoted to retail sales is small (less than 10 percent of the floor area, up to 2,000 square feet).
- C. Examples. Instrument and machinery manufacturers, food processors, furniture manufacturers, wineries, wholesale bakeries.
- D. Exclusions. Heavy Manufacturing is a separate category. [Ord. 2763 § 1 (Exh. A § 5), 9-16-13.]

	USES	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards	
100	AGRICULTURAL USES																				
Def.	Horticulture	P	P	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)												

	USES	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards	
	INDUSTRIAL USES																				
	Light Manufacturing										P	P	P	P						P(33)	

Key:

- P: Permitted use
- S: Special use – Use requires a special use permit
- C: Conditional use – Requires a conditional use permit
- X: Prohibited use
- (#): See notes for limitations

Notes.

- (1) Limited to sites with preexisting agricultural uses, including at time of annexation.
- (33) Must be aviation-related. See Chapter 15.332 NMC.

**TIME**

HB 3400, Section 33 allows local government to regulate the manner and access of marijuana producers and processors sites. Specifically the law reads:

**SECTION 33.** Section 59, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 59.** *[(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.]*

*[(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.]*

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

**(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;**

**(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;**

**(f) Reasonable requirements related to the public’s access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and**

**(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.**

**(3) Regulations adopted under this section must be consistent with city and county comprehensive plans and zoning ordinances and applicable provisions of public health and safety laws.**

HB 3400, Section 33 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 Planning Commission 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 33 allows local government to regulate the manner of marijuana producers and processors sites. Specifically the law reads:

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**(1) For purposes of this section, "reasonable regulations" includes:**

**(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;**

**(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;**

**(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and**

**(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.**

**(3) Regulations adopted under this section must be consistent with city and county comprehensive plans and zoning ordinances and applicable provisions of public health and safety laws.**

HB 3400, Section 13 authorizes OLCC to limit mature grow canopies. The law reads:

(License Holders)

**SECTION 13. (1) Subject to subsection (2) of this section, the Oregon Liquor Control Commission shall adopt rules restricting the size of mature marijuana plant grow canopies at premises for which a license has been issued under section 19, chapter 1, Oregon Laws 2015. In adopting rules under this subsection, the commission shall:**

**(a) Limit the size of mature marijuana plant grow canopies, for premises where marijuana is grown outdoors and for premises where marijuana is grown indoors, in a manner calculated to result in premises that produce the same amount of harvested marijuana leaves and harvested marijuana flowers regardless of whether the marijuana is grown outdoors or indoors.**

**(b) Adopt a tiered system under which the permitted size of a marijuana producer's mature marijuana plant grow canopy increases at the time of licensure renewal under section 19, chapter 1, Oregon Laws 2015, except that the permitted size of a marijuana producer's mature marijuana plant grow canopy may not increase following any year during which the commission disciplined the marijuana producer for violating a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or a rule adopted under a provision of sections 3 to 70, chapter 1, Oregon Laws 2015.**

**(c) Take into consideration the market demand for marijuana items in this state, the number of persons applying for a license under section 19, chapter 1, Oregon Laws 2015, and to whom a license has been issued under section 19, chapter 1, Oregon Laws 2015, and whether the availability of marijuana items in this state is commensurate with the market demand.**

**(2) This section does not apply to a premises for which a license has been issued under section 19, chapter 1, Oregon Laws 2015, if the premises is used only to propagate immature marijuana plants.**

**GENERAL REQUIREMENTS APPLICABLE TO ALL  
MARIJUANA LICENSEES**

**OAR 845-025-1030 Application Process**

**(g) For producers:**

**(A) The proposed canopy size and tier as described in OAR 845-025-2040 and a designation of the canopy area within the license premises.**

**(B) A report describing the applicant's electrical and water usage, on a form prescribed by the Commission. The report must describe the estimated water usage taking into account all portions of the premises and expected requirements of the operation.**

**(C) A description of the growing operation including growing media, a description of equipment to be used in the production, and whether production will be indoor, outdoor or both.**

**(D) A water right permit or certificate number; a statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or proof from the Oregon Water Resources Department that the water to be used for production is from a source that does not require a water right.**

**(h) For processors:**

(A) On a form prescribed by the Commission, the proposed endorsements as described in OAR 845-025-3210.

(B) A description of the type of products to be processed, a description of equipment to be used, including any solvents, gases, chemicals or other compounds used to create extracts or concentrates.

Oregon Administrative Rule, Division 25 establishes fees for recreational marijuana producers and processors.

**OAR 845-025-1060**

**Fees** (1) At the time of initial license or certificate application an applicant must pay a \$250 nonrefundable application fee.

(2) If the Commission approves an application and grants an annual license, the following fees must be paid, prorated for an initial license that is issued for six months or less:

(a) Producers:

(A) Tier I \$3,750

(B) Tier II \$5,750

(b) Processors: \$4,750

Oregon Administrative Rule, Division 25 provides for civil penalties for failure to comply with local ordinances.

**OAR 845-025-1295**

**Local Ordinances** The Commission may impose a civil penalty, suspend or cancel any licensee for failure to comply with an ordinance adopted by a city or county pursuant to section 34, chapter 614, Oregon Laws 2015 if the city or county:

(1) Has provided the licensee with due process substantially similar to the due process provided to a licensee under the Administrative Procedures Act, ORS 183.413 to 183.470; and

(2) Provides the Commission with a final order that is substantially similar to the requirements for a final order under ORS 183.470 that establishes that the licensee has violated the local ordinance.

Oregon Administrative Rule, Division 25 establishes security requirements for recreational marijuana producers.

## SECURITY

**OAR 845-025-1470**

**Producer Security Requirements** (1) In addition to the security requirements in OAR 845-025-1400 to 845-025-1460, a producer must effectively prevent public access and obscure from public view all areas of marijuana production. A producer may satisfy this requirement by:

(a) Submitting a security plan as described in OAR 845-025-1400;

(b) Fully enclosing indoor production on all sides so that no aspect of the production area is visible from the exterior satisfies; or

(c) Erecting a solid wall or fence on all exposed sides of an outdoor production area that is at least eight (8) feet high.

(2) If a producer chooses to dispose of usable marijuana by any method of composting, as described in OAR 845-025-7750, the producer must prevent public access to the composting area and obscure the area from public view.

Oregon Administrative Rule, Division 25 establishes safety inspections and requirements to contact local governments on water and sanitary sewer to ensure compliance.

## HEATH AND SAFETY

### OAR 845-025-1600

#### State and Local Safety Inspections

(1) All marijuana licensees may be subject to inspection of licensed premises by state or local government officials to determine compliance with state or local health and safety laws.

(2) A licensee must contact any utility provider to ensure that the licensee complies with any local ordinance or utility requirements such as water use, discharge into the sewer system, or electrical use.

Oregon Administrative Rule, Division 25 establishes that producers may have indoor and outdoor operations.

## RECREATIONAL MARIJUANA PRODUCERS

### OAR 845-025-2020

#### Producer Privileges

(1) A producer may only plant, cultivate, grow, harvest and dry marijuana in the manner approved by the Commission and consistent with chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015 and these rules.

(2) A producer may engage in indoor or outdoor production of marijuana, or a combination of the two.

(3) A producer may sell or deliver:

(a) Usable marijuana to the licensed premises of a marijuana processor, wholesaler, retailer, laboratory, or research certificate holder;

(b) Dried mature marijuana plants that have been entirely removed from any growing medium to the licensed premises of a marijuana processor or research certificate holder; or

(c) Immature marijuana plants and seeds to the licensed premises of a marijuana producer, wholesaler, retailer or research certificate holder.

(4) A producer may not sell a mature marijuana plant other than as provided in section (3)(b) of this rule.

(5) A producer may provide a sample of usable marijuana to a marijuana wholesaler, retailer or processor licensee for the purpose of the licensee determining whether to purchase the product. The sample product may not be consumed on a licensed premises. Any sample provided to another licensee must be recorded in CTS.

Oregon Administrative Rule, Division 25 limits where a producer may operate, not in a primary residence.

**OAR 845-025-2030**

**Licensed Premises of Producer**

(1) The licensed premises of a producer authorized to cultivate marijuana indoors includes all public and private enclosed areas used in the business operated at the location and any areas outside of a building that the Commission has licensed.

(2) The licensed premises of a producer authorized to cultivate marijuana outdoors includes the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases or has the right to occupy.

(3) A producer may not engage in any privileges of the license within a primary residence.

(4) The licensed premises of a producer may not be located at the same physical location or address as a marijuana grow site registered under ORS 475.304 unless the producer is also a person responsible for a marijuana grow site and has been issued a license by the Commission in accordance with section 116, chapter 614, Oregon Laws 2014, and OAR 845-025-1100.

Oregon Administrative Rule, Division 25 limits the size of canopy cover for mature marijuana plants.

**OAR 845-025-2040**

**Production Size Limitations** (1) Cultivation Batches and Cultivate Batch Sizes.

(a) A producer must establish cultivation batches and assign each cultivation batch a unique identification number. (b) A cultivation batch may not have more than 100 immature plants.

(c) A producer may have an unlimited number of cultivation batches at any one time.

**(2) Canopy Size Limits.**

(a) Indoor Production.

(A) Tier I: Up to 5,000 square feet.

(B) Tier II: 5,001 to 10,000 square feet.

(b) Outdoor production.

(A) Tier I: Up to 20,000 square feet.

(B) Tier II: 20,001 to 40,000 square feet.

(c) Mixed production. If a producer intends to have a mixture of indoor and outdoor production the Commission will determine the producer's tiers and canopy sizes by applying the ratio in section (4) of this rule.

(d) For purposes of this section, square footage of canopy space is measured starting from the outermost point of the furthest mature flowering plant in a designated growing space and continuing around the outside of all mature flowering plants located within the designated growing space.

(e) A producer may designate multiple grow canopy areas at a licensed premises but those spaces must be separated by a physical boundary such as an interior wall or by at least 10 feet of open space.

(f) If a local government adopts an ordinance that would permit a producer to have a higher canopy size limit than is permitted under this rule, the local government may petition the Commission for an increase in canopy size limits for that jurisdiction. If the Commission grants such a petition, the Commission may amend this rule in addition to considering changes to the license fee schedule.

(g) On an annual basis, the Commission will evaluate market demand for marijuana items, the number of person applying for producer licenses or licensed as producers and

whether the availability of marijuana items in this state is commensurate with the market demand. Following this evaluation the Commission may amend this rule as needed.

(3) Canopy Size Limit – Designation and Increases.

(a) A producer must clearly identify designated canopy areas and proposed canopy size in the initial license application. A producer may change a designated canopy area within a production type at any time with prior written notice to Commission, but a producer may only change canopy tiers at the time of renewal in accordance with subsection (b) of this section.

(b) A producer may submit a request to change canopy tiers at the time the producer submits an application for renewal of the license. The Commission will grant a request to increase the canopy tier for the producer's next licensure term if:

(A) The producer's renewal application is otherwise complete;

(B) There are no bases to deny or reject the producer's renewal application;

(C) The producer has not already reached the applicable maximum canopy size set forth in section (2) of this rule; and

(D) During the preceding year of licensure, the producer has not been found to be in violation, and does not have any pending allegations of violations of chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, or these rules.

(c) The Commission shall give a producer an opportunity to be heard if a request is rejected under this section.

(4) Mixed cultivation methods.

(a) A producer may produce marijuana indoors and outdoors at the same time on the same licensed premises. The Commission must be notified of a producer's plan to engage in the indoor and outdoor production of marijuana at the time of initial licensure or at renewal, and not at any other time. A producer who utilizes mixed production may only change designated canopy areas from one production type to another at the time the producer submits a renewal application.

(b) The Commission must approve the canopy size applicable to each method.

(c) The Commission will use a 4:1 ratio, for outdoor and indoor respectively, to allocate canopy size limits under this section, not to exceed the sum canopy size limits set forth in section (2) of this rule. For example, if a Tier II producer in the first year of licensure has 5,000 square feet of indoor canopy space, then the producer may have up to 20,000 square feet of outdoor canopy space at the same time.

(5) Violations. An intentional violation of this rule is a Category I violation and may result in license revocation. All other violations are Category III violations.

HB 3400, Section 14 established requirements to hold a processor license. The law states:

**SECTION 14.** Section 20, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 20.** (1) The processing of marijuana items is subject to regulation by the Oregon Liquor Control Commission.

(2) A marijuana processor must have a processor license issued by the commission for the premises at which marijuana items are processed. **To hold a processor license under this section, a marijuana processor:**

**(a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;**

**(b) Must, until January 1, 2020, provide proof that an applicant listed on an**

application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;

(c) If the marijuana processor processes marijuana extracts, may not be located in an area zoned exclusively for residential use; and

(d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.

(3) The commission shall adopt rules that:

(a) Require a marijuana processor to annually renew a license issued under this section;

(b) Establish application, licensure and renewal of licensure fees for marijuana processors;

(c) Require marijuana processed by a marijuana processor to be tested in accordance with section 92 of this 2015 Act; and

(d) Require a marijuana processor to meet any public health and safety standards and industry best practices established by the commission by rule related to:

(A) Cannabinoid edibles;

(B) Cannabinoid concentrates;

(C) Cannabinoid extracts; and

(D) Any other type of cannabinoid product identified by the commission by rule.

(4) Fees adopted under subsection (3)(b) of this section:

(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana processors; and

(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

HB 3400, Section 72 established producer reporting requirements on quantities sold. The law states:

#### **(Form and Style Amendments)**

**SECTION 72.** Section 35, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 35.** On or before the 20th day of each month, every marijuana producer shall file with the Oregon Liquor Control Commission a statement of the quantities of marijuana flowers, marijuana leaves[,] and immature marijuana plants sold by the marijuana producer during the preceding calendar month.

HB 3400, Section 91 established requirements for testing and includes a definition of “Processing” and “Producing”. The law states:

#### **TESTING OPERATIVE JANUARY 1, 2016**

**SECTION 91.** As used in sections 91 to 99 of this 2015 Act:

(1) “Cannabinoid” means any of the chemical compounds that are the active constituents of marijuana.

(2) “Cannabinoid concentrate or extract” means a substance obtained by separating cannabinoids from marijuana by a mechanical, chemical or other process.

(3) “Cannabinoid edible” means food or potable liquid into which a cannabinoid concentrate or extract or the dried leaves or flowers of marijuana have been incorporated.

(4)(a) “Cannabinoid product” means a cannabinoid edible or any other product intended for human consumption or use, including a product intended to be applied to a person’s skin or hair, that contains cannabinoids or the dried leaves or flowers of marijuana.

(b) “Cannabinoid product” does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate or extract by itself; or

(C) Industrial hemp, as defined in ORS 571.300.

(5)(a) “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

(6) “Marijuana item” means marijuana, usable marijuana, a cannabinoid product or a cannabinoid concentrate or extract.

(7) “Processing” means the compounding or conversion of marijuana into cannabinoid products or cannabinoid concentrates or extracts.

(8) “Producing” means:

(a) Planting, cultivating, growing, trimming or harvesting marijuana; or

(b) Drying marijuana leaves and flowers.

(9)(a) “Usable marijuana” means the dried leaves and flowers of marijuana.

(b) “Usable marijuana” does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

HB 3400, Section 23 established a tracking system for production and processing. The law states:

**(Seed to Sale Tracking System)**

**SECTION 23. (1) The Oregon Liquor Control Commission shall develop and maintain a system for tracking the transfer of marijuana items between licensed premises.**

**(2) The purposes of the system developed and maintained under this section include, but are not limited to:**

**(a) Preventing the diversion of marijuana items to criminal enterprises, gangs, cartels and other states;**

**(b) Preventing persons from substituting or tampering with marijuana items;**

**(c) Ensuring an accurate accounting of the production, processing and sale of marijuana items;**

**(d) Ensuring that taxes are collected for the purpose of being distributed as described in section 44, chapter 1, Oregon Laws 2015;**

(e) Ensuring that laboratory testing results are accurately reported; and  
(f) Ensuring compliance with the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, rules adopted under the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, and any other law of this state that charges the commission with a duty, function or power related to marijuana.

**(3) The system developed and maintained under this section must be capable of tracking, at a minimum:**

**(a) The propagation of immature marijuana plants and the production of marijuana by a marijuana producer;**

**(b) The processing of marijuana by a marijuana processor;**

(c) The receiving, storing and delivering of marijuana items by a marijuana wholesaler;

(d) The sale of marijuana items by a marijuana retailer to a consumer;

(e) The purchase and sale of marijuana items between licensees, as permitted by sections 3 to 70, chapter 1, Oregon Laws 2015;

(f) The transfer of marijuana items between licensed premises;

(g) The collection of taxes imposed upon the retail sale of marijuana items under section 70 of this 2015 Act; and

(h) Any other information that the commission determines is reasonably necessary to accomplish the duties, functions and powers of the commission under sections 3 to 70, chapter 1, Oregon Laws 2015.

Oregon Administrative Rule, Division 25 requires endorsements for recreational marijuana processors.

## RETAIL MARIJUANA PROCESSORS

### **OAR 845-025-3200**

Definitions For purposes of OAR 845-025-3200 to 845-025-3290:

(1) "Cannabinoid topical" means a cannabinoid product intended to be applied to skin or hair.

(2) "Food" means a raw, cooked, or processed edible substance, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

### **OAR 845-025-3210**

#### **Endorsements**

(1) A marijuana processor may only process and sell cannabinoid products, concentrates or extracts if the processor has received an endorsement from the Commission for that type of processing activity. Endorsements types are:

(a) Cannabinoid edible processor;

(b) Cannabinoid topical processor;

(c) Cannabinoid concentrate processor; and

(d) Cannabinoid extract processor.

(2) An applicant must request an endorsement upon submission of an initial application but may also request an endorsement at any time following licensure.

(3) In order to apply for an endorsement an applicant or processor licensee must submit a form prescribed by the Commission that includes a description of the type of products to

be processed, a description of equipment to be used, and any solvents, gases, chemicals or other compounds proposed to be used to create extracts or concentrates.

(4) Only one application and license fee is required regardless of how many endorsements an applicant or licensee requests or at what time the request is made.

**(5) An individual processor licensee may hold multiple endorsements.**

(6) For the purposes of endorsements any cannabinoid product that is intended to be consumed orally is considered a cannabinoid edible.

(7) If a processor is no longer going to process the product for which the processor is endorsed the processor must notify the Commission in writing and provide the date on which the processing of that product will cease.

(8) The Commission may deny a processor's request for an endorsement if the processor cannot or does not meet the requirements in OAR 845-025-3200 to 845-025-3290 for the endorsement that is requested. If the Commission denies approval the processor has a right to a hearing under the procedures of ORS chapter 183.

Oregon Administrative Rule, Division 25 establishes requirements for equipment and surfaces for processors.

### **OAR 845-025-3220**

#### **General Processor Requirements**

(1) A processor must:

(a) Use equipment, counters and surfaces for processing that are food-grade and do not react adversely with any solvent being used.

(b) Have counters and surface areas that are constructed in a manner that reduce the potential for development of microbials, molds and fungi and that can be easily cleaned.

(c) Maintain the licensed premises in a manner that is free from conditions which may result in contamination and that is suitable to facilitate safe and sanitary operations for product preparation purposes.

(d) Store all marijuana items not in use in a locked area, including products that require refrigeration in accordance with OAR 845-025-1410.

(e) Assign every process lot a unique identification number and enter this information into CTS.

(2) A processor may provide a sample of a cannabinoid product, concentrate or extract to a marijuana wholesaler or retailer for the purpose of the wholesaler or retailer licensee determining whether to purchase the product but the product may not be consumed on a licensed premises. Any sample provided to another licensee must be recorded in CTS.

(3) A processor may not process or sell a marijuana item:

(a) That by its shape and design is likely to appeal to minors, including but not limited to:

(A) Products that are modeled after non-cannabis products primarily consumed by and marketed to children; or

(B) Products in the shape of an animal, vehicle, person or character.

(b) That is made by applying cannabinoid concentrates or extracts to commercially available candy or snack food items.

Oregon Administrative Rule, Division 25 establishes limitations on where processors can locate in regards to restaurant operations.

### **OAR 845-025-3250**

#### **Cannabinoid Edible Processor Requirements**

- (1) A cannabinoid edible processor may only process in a food establishment licensed by the Oregon Department of Agriculture (ODA) and must comply with the applicable provisions of OAR 603, Division 21, Division 22, Division 24, Division 25, with the exception of OAR 603- 025-0020(17) and Division 28.
- (2) A cannabinoid edible processor may not:
  - (a) Engage in processing in a location that is operating as a restaurant, seasonal temporary restaurant, intermittent temporary restaurant, limited service restaurant, single-event temporary restaurant, commissary, mobile unit, bed or breakfast, or warehouse licensed under ORS 624;
  - (b) Share a food establishment with a person not licensed and endorsed by the Commission as a cannabinoid edible processor;
  - (c) Process food intended for commercial sale that does not contain cannabinoids, at the licensed premises; or
  - (d) Use a cannabinoid concentrate or extract to process food unless that concentrate or extract was made by a processor licensed by the ODA under ORS 616.706.
- (3) A cannabinoid edible processor may share a food establishment with another cannabinoid edible processor if:
  - (a) The schedule, with specific hours and days that each processor will use the food establishment, is prominently posted at the entrance to the food service establishment and has been approved by the Commission:
    - (A) The schedule must be submitted to the Commission in writing and will be approved if it demonstrates that use of a shared food establishment by multiple cannabinoid edible processors does not create an increased compliance risk.
    - (B) A processor licensee may only change the schedule with prior written approval from the Commission.
  - (b) Each licensee designates a separate area to secure, in accordance with OAR 845-025-1410, any marijuana, cannabinoid products, concentrates or extracts that a licensee stores at the food establishment. If a cannabinoid edible processor does not store marijuana, cannabinoid products, concentrates or extracts at the food establishment those items must be stored on a licensed premises.
- (4) A food establishment used by a cannabinoid edible processor is considered a licensed premises and must meet the security and other licensed premises requirements in these rules.
- (5) A cannabinoid edible processor is strictly liable for any violation found at a shared food establishment during that processor's scheduled time or within that processor's designated area in the food establishment.

Oregon Administrative Rule, Division 25 establishes rules for concentrate and extract processors.

### **OAR 845-025-3260**

#### **Cannabinoid Concentrate and Extract Processor Requirements**

- (1) Cannabinoid Concentrates or Extracts. A processor with a cannabinoid concentrate or extract endorsement:
  - (a) May not use Class I solvents as those are classified in the Federal Drug Administration Guidance, Table I, published in the Federal Register on December 24, 1997 (62 FR 67377).
  - (b) Must:
    - (A) Only use a hydrocarbon-based solvent that is at least 99 percent purity.
    - (B) Only use a non-hydrocarbon-based solvent that is food-grade.

- (C) Work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.
- (D) Use only potable water and ice made from potable water in processing.
- (E) If making a concentrate or extract that will be used in a cannabinoid edible, be endorsed as a cannabinoid edible processor and comply with OAR 845-025-3250.
- (2) Cannabinoid Extracts. A processor with an endorsement to make cannabinoid extracts:
  - (a) May not use pressurized canned butane.
  - (b) Must:
    - (A) Process in a:
      - (i) Fully enclosed room clearly designated on the current diagram of the licensed premises.
      - (ii) Spark proof room equipped with evacuation fans and lower explosive limit (LEL) detectors.
    - (B) Use a commercially manufactured professional grade closed loop extraction system designed to recover the solvents and built to codes of recognized and generally accepted good engineering practices, such as:
      - (i) The American Society of Mechanical Engineers (ASME);
      - (ii) American National Standards Institute (ANSI);
      - (iii) Underwriters Laboratories (UL); or
      - (iv) The American Society for Testing and Materials (ASTM).
    - (C) If using CO<sub>2</sub> in processing, use a professional grade closed loop CO<sub>2</sub> gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch.
    - (D) Have equipment and facilities used in processing approved for use by the local fire code official;
    - (E) Meet any required fire, safety, and building code requirements specified in:
      - (i) Applicable Oregon laws;
      - (ii) National Fire Protection Association (NFPA) standards;
      - (iii) International Building Code (IBC);
      - (iv) International Fire Code (IFC); and
    - (F) Have an emergency eye-wash station in any room in which cannabinoid extract is being processed; and
    - (G) Have all applicable material safety data sheets readily available to personnel working for the processor.
- (3) Cannabinoid Concentrates. A processor with an endorsement to make cannabinoid concentrates:
  - (a) May not:
    - (A) Use denatured alcohol.
    - (B) If using carbon dioxide, apply high heat or pressure.
  - (b) Must only use or store dry ice in a well-ventilated room to prevent against the accumulation of dangerous levels of CO<sub>2</sub>.
  - (c) May use:
    - (A) A mechanical extraction process;
    - (B) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or
    - (C) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use heat over 180 degrees or pressure.

Oregon Administrative Rule, Division 25 limits where topical processor may operate in regards to restaurants.

**OAR 845-025-3280**

**Cannabinoid Topical Processor**

A processor with a cannabinoid topical endorsement may not engage in processing in a location that is operating as a restaurant, seasonal temporary restaurant, intermittent temporary restaurant, limited service restaurant or single-event temporary restaurant licensed under ORS 624.

Oregon Administrative Rule, Division 25 establishes rules for waste from production and processing operations.

**WASTE MANAGEMENT**

**OAR 845-025-7750**

**Waste Management**

(1) A licensee must:

(a) Store, manage and dispose of solid and liquid wastes generated during marijuana production and processing in accordance with applicable state and local laws and regulations which may include but are not limited to:.

(A) Solid waste requirements in ORS 459 and OAR 340 Divisions 93 to 96;

(B) Hazardous waste requirements in ORS 466 and OAR 340, Divisions 100 to 106; and

(C) Wastewater requirements in ORS 468B and OAR 340, Divisions 41 to 42, 44 to 45, 53, 55 and 73.

(b) Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.

(2) A licensee may give or sell marijuana waste to a producer, processor or wholesale licensee or research certificate holder. Any such transaction must be entered into CTS pursuant to OAR 845- 025-7500.

(3) In addition to information required to be entered into CTS pursuant to OAR 845-025-7500, a licensee must maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of marijuana.

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? There may be other manners of operation the City Council identifies for discussion and consideration.

Staff therefore proposes the following code amendments for Recreational Marijuana Producers and Processors:

- Prohibit Recreational Marijuana Producer as an indoor or outdoor use in R-1, R-2, R-3, R-4, R-P, AR, R-1/PD, R-1/0.1, 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, C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2,PD, C-2/SP, C-3/LU, SD/V, SD/NC,

SD/H, CC, M-4-C, CF, CF/RF, RF, I, IO, FHO, AI, AIO, H, SC, BI.

- Add Recreational Marijuana Producer as an indoor permitted use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.
- Add Recreational Marijuana Producer as a conditional outdoor use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.
- Add Recreational Marijuana Processor as a permitted indoor use in M-1, M-2, M-3, M-4-I and SD/E.
- Adds Recreational Marijuana Processor as a conditional use in C-2 with a requirement for a 1,000 foot buffer from schools and parks.
- Prohibits Recreational Marijuana Processor in all residential, commercial (except C-2), community facility, institutional, airport industrial and miscellaneous districts and subdistricts.
- Add definitions for Recreational Marijuana Producer and Processor.

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

Marijuana Processors:

1. Allow Recreational Marijuana Processor in industrial zoning categories as a permitted use indoors (M-1, M-2, M-3, M-4 and SD/E).
2. Prohibit Recreational Marijuana Processor in AI and AIO and all residential, commercial community facility, institutional and miscellaneous districts and subdistricts.
3. Add a definition for Recreational Marijuana Processor.

Marijuana Producers:

1. Allow Recreational Marijuana Producer as a conditional use indoors in certain residential districts or subdistricts (R-1, R-2, R-1/PD, R-1/0.1, R-1/.04, R-1/6.6, R-1/SP, R-2/PD, R-2/SP and SD/LDR).
2. Prohibit Recreational Marijuana Producer in commercial districts and subdistricts.
3. Prohibit Recreational Marijuana Producer in the Community Facility district and subdistrict.
4. Prohibit Recreational Marijuana Producer in the Institutional district and subdistrict.
5. Allow Recreational Marijuana Producer in industrial zones as a permitted use indoors in M-1, M-2, M-3, M-4, SD/E, M-1/SP and II.
6. Allow Recreational Marijuana Producer in industrial zones as a conditional use outdoors in M-1, M-2, M-3, M-4, M-1/SP, SD/E and II.
7. Prohibit Recreational Marijuana Producer in AI and AIO.

8. Prohibit Recreational Marijuana Producer in H, SC and BI.
9. Add a definition for Recreational Marijuana Producer.

**G. PLANNING COMMISSION RECOMMENDATION**

The Newberg Planning Commission held a public hearing on February 25, 2016, heard public testimony, and approved Resolution 2015-313, which recommends that the City Council:

- Prohibit Recreational Marijuana Producer as an indoor or outdoor use in R-1, R-2, R-3, R-4, R-P, AR, R-1/PD, R-1/0.1, 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, C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, CC, M-4-C, CF, CF/RF, RF, I, IO, FHO, AI, AIO, H, SC, BI.
- Add Recreational Marijuana Producer as an indoor permitted use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.
- Add Recreational Marijuana Producer as a conditional outdoor use in in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.
- Add Recreational Marijuana Processor as a permitted indoor use in M-1, M-2, M-3, M-4-I and SD/E.
- Prohibits Recreational Marijuana Processor in all residential, commercial, community facility, institutional, airport industrial and miscellaneous districts and subdistricts.
- Add definitions for Recreational Marijuana Producer and Processor.

**FISCAL IMPACT:** The fiscal impact of allowing recreational marijuana producers and processors is unknown at this time.

**STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):**

Recreational Marijuana Producers 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 2016-2798 with

Exhibit "A": Proposed Development Code Text Amendment

Exhibit "B": Findings

1. Resolution No. 2015-3248
2. Planning Commission Resolution 2016-313
3. Map C-2 District East
4. Map C-2 District West
5. Map Schools 1,000' Buffer
6. Map Parks 1,000' Buffer
7. Map Schools/Parks 1,000' Buffer
8. Submitted comment from Sheri Ralston



## **ORDINANCE No. 2016-2798**

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**AN ORDINANCE AMENDING THE NEWBERG DEVELOPMENT CODE  
REGARDING RECREATIONAL MARIJUANA PRODUCERS AND  
PROCESSORS; AND DECLARING AN EMERGENCY**

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### **RECITALS:**

1. Measure 91 was approved by Oregon voters in November 2014 and House Bill 3400 was enacted by the Oregon Legislature in 2015 related to recreational marijuana.
2. 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.
3. The Newberg City Council established the Marijuana Subcommittee on September 8, 2015 to review and provide recommendations on local place, time and manner regulations for recreational marijuana.
4. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding recreational marijuana producers and processors on January 4, 2016, under City Council Resolution 2015-3248.
5. The Marijuana Subcommittee met on January 12, 2016 and developed recommendations to the Planning Commission on recreational marijuana producers and processors.
6. After proper notice, the Newberg Planning Commission held a hearing on February 25, 2016 to consider the amendment for recreational marijuana producers and processors. The Commission considered testimony, deliberated, and found that adding regulations for recreational marijuana producers and processors would be in the best interests of the city. The Planning Commission approved Resolution 2016-313, which recommends that the City Council adopt the proposed amendments to the Newberg Development Code.
7. After proper notice, the Newberg City Council held a hearing on March 21, 2016 and continued the hearing to April 4, 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 recreational marijuana producers and processors 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 ordinance is April 5, 2016.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 4<sup>th</sup> day of April, 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 2016-2798  
Development Code Amendments –File DCA-15-003  
Recreational Marijuana Producers  
and Processors**

**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**

“Marijuana processor” means a person who processes marijuana items in this state.

“Marijuana producer” means a person who produces marijuana in this state.

**Section 2. Newberg Development Code, Zoning Use Table, Section 15.305.020 shall be amended to read as follows:**

**See Exhibit A, Attachment 1**

**Section 3. Newberg Development Code, Zoning Use Table, Section 15.305.030 shall be amended to read as follows:**

**See Exhibit A, Attachment 2**

**Section 4. Newberg Development Code, Stream Corridor Overlay Subdistrict, Section 15.342.110 is amended to read as follows:**

**15.342.110 Prohibited uses and activities.**

The following activities or **uses** are prohibited within this subdistrict:

A. Except as provided in NMC 15.342.040(R), the planting or propagation of any plant identified as a nuisance plant as determined by a qualified botanist or indicated as a nuisance plant on the Newberg plant list.

B. The removal of native trees that are greater than six inches in diameter at breast height, except as is otherwise permitted within this chapter.

C. Any **use** dealing with hazardous substances or materials, including but not limited to gas service stations.

D. Public pathways, except those in conjunction with public lands, public **parks** or public **easements** that have been acquired by other than eminent domain. [Ord. 2451, 12-2-96. Code 2001 § 151.475.]

E. Recreational Marijuana Producer and Recreational Marijuana Processor.

**Section 5. Newberg Development Code, Civic Corridor Overlay Subdistrict, Section 15.350.030 is amended to read as follows:**

**15.350.030 Permitted buildings and uses.**

All **uses** permitted in the underlying primary district are permitted within the CC subdistrict except as follows:

A. In addition to the **buildings** and **uses** permitted conditionally in NMC 15.305.020, the **planning commission** may grant a **conditional use permit** for any of the following **buildings** and **uses** in accordance with a Type III procedure:

1. Facilities which exist for the purpose of providing for the temporary care and/or lodging of adult indigent **persons**.

2. **Hospitals**.

B. The following **uses** are prohibited within the CC subdistrict:

1. **Automobile sales**, new and used.

2. Car washes, coin-operated or mechanical.

3. Garages, repair.

4. Service stations. [Amended during 11/13 supplement; Ord. 2561, 4-1-02. Code 2001 § 151.526.3.]

5. Recreational Marijuana Producer and Recreational Marijuana Processor.

**Section 6. Newberg Development Code, Bypass Interchange Overlay, Section 15.356.050 is amended to read as follows:**

**15.356.050 Prohibited uses.**

A. Several commercial types of **uses** are permitted outright or with conditional **use** approval in Newberg's industrial districts (M-1, M-2, and M-3). The area within the Newberg UGB near the

Oregon 219 Interchange is generally planned for industrial **use**. To protect the interchange area from commercial development, the following **uses** are prohibited within the M-1, M-2, and M-3 districts within the boundaries of the bypass interchange overlay:

1. **Automobile sales**, new and used.
2. Billboards.
3. Car washes.
4. Convenience grocery stores.
5. **Restaurants** larger than 2,000 square feet or with drive-up service windows.
6. Service stations.
7. Drive-in theaters.
8. Auction sales.
9. Bakeries, retail.
10. **Building** material sales.
11. Driving ranges.
12. Feed and seed stores.
13. Miniature **golf courses**.
14. Skating rinks.
15. Recreational Marijuana Producer and Recreational Marijuana Processor.

B. The industrial commercial subdistrict of the M-4 district shall not be applied within the boundaries of the BI overlay. [Ord. [2734](#) § 1 (Exh. B), 3-7-11; Ord. [2708](#) § 2, 12-1-08; Ord. [2602](#), 9-20-04. Code 2001 § 151.531.4.]

**Section 7. Newberg Development Code, Interim Industrial Overlay, Section 15.358.030 is amended to read as follows:**

**15.358.030 Permitted uses.**

All **uses** of land and water that are permitted in the underlying zoning district(s) are also permitted in the interim industrial overlay, with the exception of those **uses** listed in NMC [15.358.050](#). In addition, the following are permitted:

- A. Contractor's equipment or storage.
- B. Construction material storage. [Ord. [2720](#) § 1(5), 11-2-09. Code 2001 § 151.532.2.]

C. Recreational Marijuana Producer (indoor).

**Section 8. Newberg Development Code, Interim Industrial Overlay, Section 15.358.040 is amended to read as follows:**

**15.358.040 Conditional uses.**

A. **Use** of land and water that are listed as conditional **uses** in the underlying zoning district(s) may also be allowed in the interim industrial overlay, with the exception of **uses** included in the list of prohibited **uses** in NMC 15.358.050.

B. Proposed conditional **uses** in the interim industrial overlay are subject to the standard conditional **use** criteria and procedures of this **code**. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.3.]

C. Recreational Marijuana Producer (outdoor).

**Section 9. Newberg Development Code, Interim Industrial Overlay, Section 15.358.050 is amended to read as follows:**

**15.358.050 Prohibited uses.**

The following **uses** are prohibited in the interim industrial overlay:

A. **Cemeteries.**

B. Garbage dumps, sanitary landfills.

C. **Parks.**

D. Permanent **buildings.**

E. **Wrecking yards** for motor vehicles, **building** materials, and other similar items.  
[Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.4.]

F. Recreational Marijuana Processor.

**Exhibit “B” to Ordinance 2016-2798  
Findings –File DCA-15-003  
Recreational Marijuana Producers  
and Processors**

**Findings –File DCA-15-003  
Recreational Marijuana Producers and Processors**

**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 January 4, 2016. The Marijuana Subcommittee meet on January 12, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Marijuana Producers and Processors. The Planning Commission, after proper notice, held a public hearing on February 25, 2016. The City Council considered the recommendation of the Planning Commission at a public hearing on March 21, 2016 and April 4, 2016, and decided 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 Recreational Marijuana Producer and Processor 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 January 4, 2016. The Marijuana Subcommittee meet on January 12, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Producers and Processors. The Planning Commission, after proper notice, held a public hearing on February 25, 2016. The City Council considered the recommendation of the Planning Commission at a public hearing on March 21, 2016 and April 4, 2016, and decided 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 Recreational Marijuana Producers and Processors 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 Recreational Producer or Processor operation is a legal operation under State law. Allowing Recreational Marijuana Producer as a permitted use indoors in industrial districts or subdistricts or as a conditional use for outdoor operations; prohibiting Recreational Marijuana Producer in commercial, community facility, institutional and airport districts and subdistricts; and allowing Recreational Marijuana Processor as a permitted use in M-1, M-2, M-3, M-4, and SD/E and as a conditional use in C-2 with a 1,000 foot buffer requirement from schools and parks 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.







- (16) Allowed in areas designated in industrial area plans.
- (17) Limited to facilities owned or operated by a public agency.
- (18) Parking garages are a conditional **use**, and must have first floor **street** frontage of 40 feet or less for ingress or egress. First floor development must be commercial.
- (19) A **conditional use permit** is required if the facility is less than 2,000 feet from the nearest **telecommunication facility**.
- (20) Businesses in the C-1 zone that have hours of operation between 10:00 p.m. and 7:00 a.m. require a conditional use permit.
- (21) Drive-up service windows accessory to an existing business on the site with walk-in customer service, such as a drive-up bank window, are allowed only with a **conditional use permit**. Otherwise, drive-up service windows, 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). 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 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) Indoor use only.
- (38) The use is not allowed 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). 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 to the closest point of the premises of a recreational processor.

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	<u>R-1/0.1</u>	<u>R-1/0.4</u>	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
	<u>Recreational Marijuana Processor</u>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	X	X	X	X	X
	<u>Recreational Marijuana Producer (Indoor)</u>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	X	P	X	X	X
	<u>Recreational Marijuana Producer (Outdoor)</u>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	C	C	X	C	X	X	X

Key:

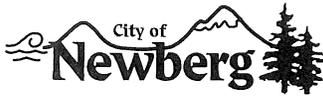
P: Permitted use

S: Special use – Use requires a special use permit

C: Conditional use – Requires a conditional use permit

X: Prohibited use

(#): See notes for limitations

**RESOLUTION No. 2016-3248**

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**A RESOLUTION INITIATING AN AMENDMENT TO THE NEWBERG MUNICIPAL CODE, TITLE 15 DEVELOPMENT CODE FOR TIME, PLACE AND MANNER REGULATIONS FOR RECREATIONAL MARIJUANA PRODUCERS AND PROCESSORS**

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**RECITALS:**

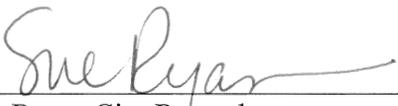
1. The Oregon Legislature enacted four bills during the 2015 legislative session related to the Oregon Medical Marijuana Act and Measure 91. House Bill (HB) 3400 was the omnibus bill covering recreational marijuana and modifications to the medical marijuana program.
2. On September 8, 2015 the Newberg 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 second meeting on December 9, 2015. A proposed timeline was included in their packet of material to address recreational marijuana time, place and manner. At the meeting staff raised a new timeline issue based on new information from the Oregon Liquor Control Commission (OLCC) on their timeline of implementing the recreational marijuana program. Specifically, OLCC has indicated they will start issuing licenses for Producers and Processors in the 2<sup>nd</sup> Quarter of 2016.
4. The Subcommittee subsequently passed a motion 3-0 directing staff to create an RCA to initiate the Development Code amendment process for recreational marijuana producers and processors to bring forward for Council consideration on January 4, 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 Time, Place and Manner Regulations for Recreational Marijuana Producers and Processors. 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: January 5, 2016  
**ADOPTED** by the City Council of the City of Newberg, Oregon, this 4<sup>th</sup> day of January, 2016.

  
\_\_\_\_\_  
Sue Ryan, City Recorder

**ATTEST** by the Mayor this 7<sup>th</sup> day of January, 2016.

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



## PLANNING COMMISSION RESOLUTION 2016-313

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**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL AMEND THE  
NEWBERG DEVELOPMENT CODE REGARDING RECREATIONAL MARIJUANA  
PRODUCERS AND PROCESSORS**

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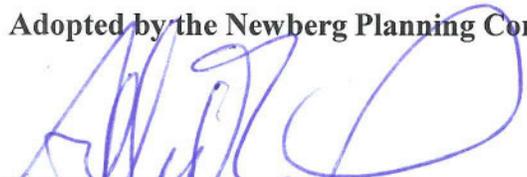
### RECITALS

1. In November 2014 voters in Oregon approved Ballot Measure 91 related to recreational marijuana.
2. House Bill (HB) 3400 was passed in the 2015 Oregon Legislative session related to recreational marijuana.
3. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding recreational marijuana producers and processors on January 4, 2016 by Resolution No. 2015-3248.
4. After proper notice, the Newberg Planning Commission held a hearing on February 25, 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 recreational marijuana producers and processors, and adding definitions for recreational marijuana producers and processors, 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 25<sup>th</sup> day of February, 2016.**

  
\_\_\_\_\_  
Planning Commission Chair

ATTEST:

  
\_\_\_\_\_  
Planning Commission Secretary

List of Exhibits:

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

**Exhibit "A" to Planning Commission Resolution 2016-313  
Development Code Amendments –File DCA-15-003  
Recreational Marijuana Producers and Processors**

**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:

"Marijuana processor" means a person who processes marijuana items in this state.

"Marijuana producer" means a person who produces marijuana in this state.

**Section 2. Newberg Development Code, Zoning Use Table, Section 15.305.020 shall be amended to read as follows:**

**See Exhibit A, Attachment 1**

**Section 3. Newberg Development Code, Zoning Use Table, Section 15.305.030 shall be amended to read as follows:**

**See Exhibit A, Attachment 2**

**Section 4. Newberg Development Code, Stream Corridor Overlay Subdistrict, Section 15.342.110 is amended to read as follows:**

**15.342.110 Prohibited uses and activities.**

The following activities or uses are prohibited within this subdistrict:

A. Except as provided in NMC 15.342.040(R), the planting or propagation of any plant

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identified as a nuisance plant as determined by a qualified botanist or indicated as a nuisance plant on the Newberg plant list.

B. The removal of native trees that are greater than six inches in diameter at breast height, except as is otherwise permitted within this chapter.

C. Any use dealing with hazardous substances or materials, including but not limited to gas service stations.

D. Public pathways, except those in conjunction with public lands, public parks or public easements that have been acquired by other than eminent domain. [Ord. 2451, 12-2-96. Code 2001 § 151.475.]

E. Recreational Marijuana Producer and Recreational Marijuana Processor.

**Section 5. Newberg Development Code, Civic Corridor Overlay Subdistrict, Section 15.350.030 is amended to read as follows:**

**15.350.030 Permitted buildings and uses.**

All uses permitted in the underlying primary district are permitted within the CC subdistrict except as follows:

A. In addition to the **buildings and uses** permitted conditionally in NMC 15.305.020, the **planning commission** may grant a **conditional use permit** for any of the following **buildings and uses** in accordance with a Type III procedure:

1. Facilities which exist for the purpose of providing for the temporary care and/or lodging of adult indigent persons.
2. Hospitals.

B. The following uses are prohibited within the CC subdistrict:

1. Automobile sales, new and used.
2. Car washes, coin-operated or mechanical.
3. Garages, repair.
4. Service stations. [Amended during 11/13 supplement; Ord. 2561, 4-1-02. Code 2001 § 151.526.3.]
5. Recreational Marijuana Producer and Recreational Marijuana Processor.

**Section 6. Newberg Development Code, Bypass Interchange Overlay, Section 15.356.050 is amended to read as follows:**

**15.356.050 Prohibited uses.**

A. Several commercial types of uses are permitted outright or with conditional use approval in Newberg's industrial districts (M-1, M-2, and M-3). The area within the Newberg UGB near the Oregon 219 Interchange is generally planned for industrial use. To protect the interchange area from commercial development, the following uses are prohibited within the M-1, M-2, and M-3 districts within the boundaries of the bypass interchange overlay:

1. **Automobile sales**, new and used.
2. Billboards.
3. Car washes.
4. Convenience grocery stores.
5. **Restaurants** larger than 2,000 square feet or with drive-up service windows.
6. Service stations.
7. Drive-in theaters.
8. Auction sales.
9. Bakeries, retail.
10. **Building** material sales.
11. Driving ranges.
12. Feed and seed stores.
13. Miniature **golf courses**.
14. Skating rinks.
15. Recreational Marijuana Producer and Recreational Marijuana Processor.

B. The industrial commercial subdistrict of the M-4 district shall not be applied within the boundaries of the BI overlay. [Ord. 2734 § 1 (Exh. B), 3-7-11; Ord. 2708 § 2, 12-1-08; Ord. 2602, 9-20-04. Code 2001 § 151.531.4.]

**Section 7. Newberg Development Code, Interim Industrial Overlay, Section 15.358.030 is amended to read as follows:**

**15.358.030 Permitted uses.**

All uses of land and water that are permitted in the underlying zoning district(s) are also permitted in the interim industrial overlay, with the exception of those uses listed in NMC 15.358.050. In addition, the following are permitted:

- A. Contractor's equipment or storage.
- B. Construction material storage. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.2.]
- C. Recreational Marijuana Producer (indoor).

**Section 8. Newberg Development Code, Interim Industrial Overlay, Section 15.358.040 is amended to read as follows:**

**15.358.040 Conditional uses.**

A. Use of land and water that are listed as conditional uses in the underlying zoning district(s) may also be allowed in the interim industrial overlay, with the exception of uses included in the list of prohibited uses in NMC 15.358.050.

B. Proposed conditional uses in the interim industrial overlay are subject to the standard conditional use criteria and procedures of this code. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.3.]

C. Recreational Marijuana Producer (outdoor).

**Section 9. Newberg Development Code, Interim Industrial Overlay, Section 15.358.050 is amended to read as follows:**

**15.358.050 Prohibited uses.**

The following uses are prohibited in the interim industrial overlay:

- A. Cemeteries.
- B. Garbage dumps, sanitary landfills.
- C. Parks.

D. Permanent **buildings**.

E. **Wrecking yards** for motor vehicles, **building** materials, and other similar items.  
[Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.4.]

F. Recreational Marijuana Processor.







- (16) Allowed in areas designated in industrial area plans.
- (17) Limited to facilities owned or operated by a public agency.
- (18) Parking garages are a conditional use, and must have first floor street frontage of 40 feet or less for ingress or egress. First floor development must be commercial.
- (19) A conditional use permit is required if the facility is less than 2,000 feet from the nearest telecommunication facility.
- (20) Businesses in the C-1 zone that have hours of operation between 10:00 p.m. and 7:00 a.m. require a conditional use permit.
- (21) Drive-up service windows accessory to an existing business on the site with walk-in customer service, such as a drive-up bank window, are allowed only with a conditional use permit. Otherwise, drive-up service windows, 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 fuelling 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). 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 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) Indoor use only.

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.

	R-1/PD	R-1/0.1	R-1/0.4	R-1/6.6	R-1/SP	R-2/PD	R-2/SP	SD/LDR	SD/MMR	R-3/PD	RP/SP	RP/ILU	AO	ARO	C-1/SP	C-2/LLU	C-2/PD	C-2/SP	C-3/LLU	SD/V	SD/NC	SD/H	CC	CF/RF	RF	IO	M-1/SP	SD/E	FHO	II	A/O	H	SC	BI			
600 MISCELLANEOUS USES																																					
Medical Marijuana Processor																																					
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	
Recreational Marijuana Processor	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Recreational Marijuana Producer (Indoor)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Recreational Marijuana Producer (Outdoor)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

Key:  
P: Permitted use

S: Special use – Use requires a special use permit

C: Conditional use – Requires a conditional use permit

X: Prohibited use

(#): See notes for limitations

Exhibit "B" to Planning Commission Resolution 2016-313

## **Findings –File DCA-15-003 Recreational Marijuana Producers and Processors**

### **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 January 4, 2016. The Marijuana Subcommittee meet on January 12, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Marijuana Producers and Processors. The Planning Commission, after proper notice, held a public hearing on February 25, 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 Recreational Marijuana Producer and Processor 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 January 4, 2016. The Marijuana Subcommittee meet on January 12, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Producers and Processors. The Planning Commission, after proper notice, held a public hearing on February 25, 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 Recreational Marijuana Producers and Processors proposal is supportive of this goal because it was developed following city procedures for legislative action.

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

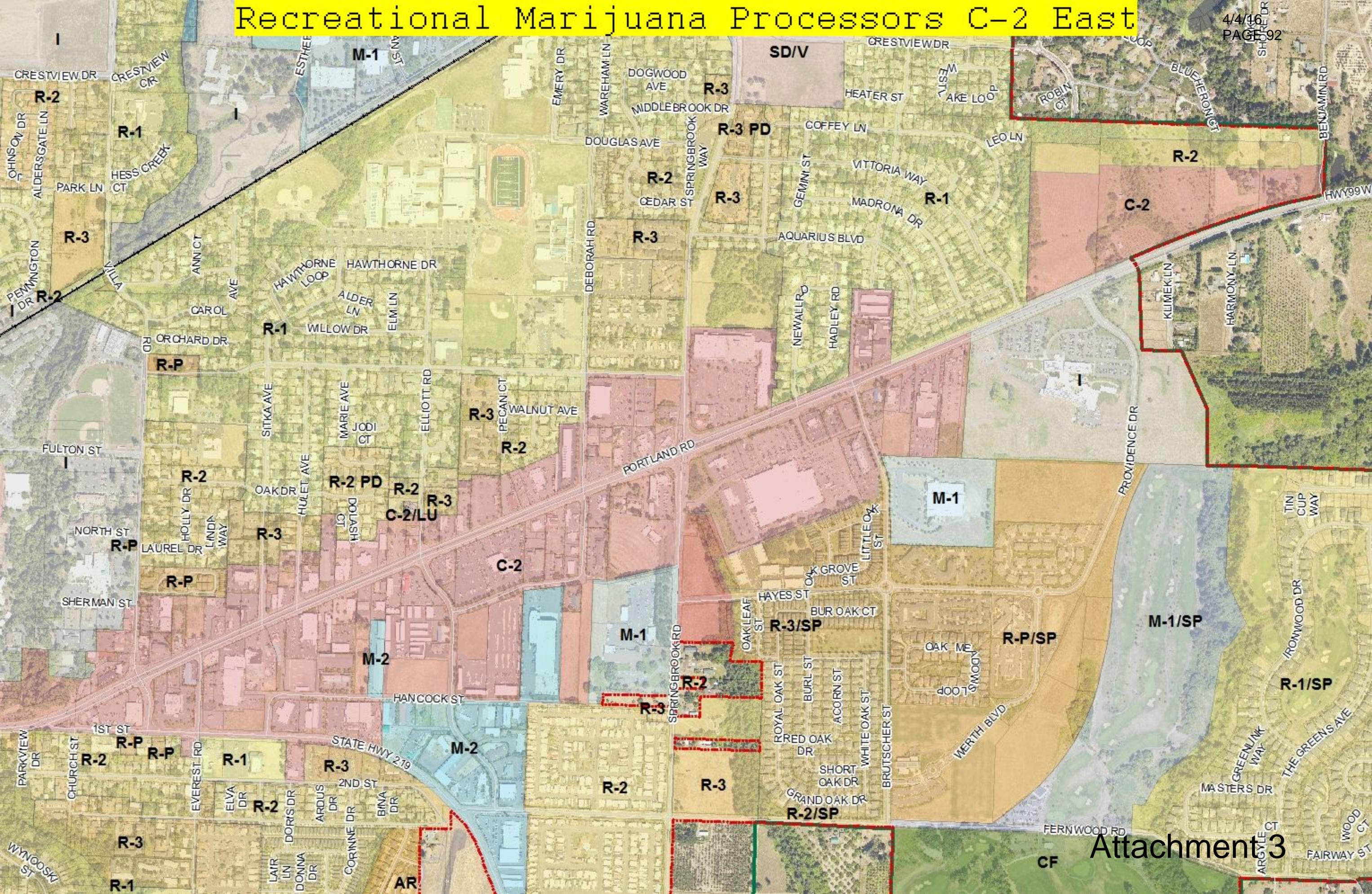
1. General Policies

- 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.

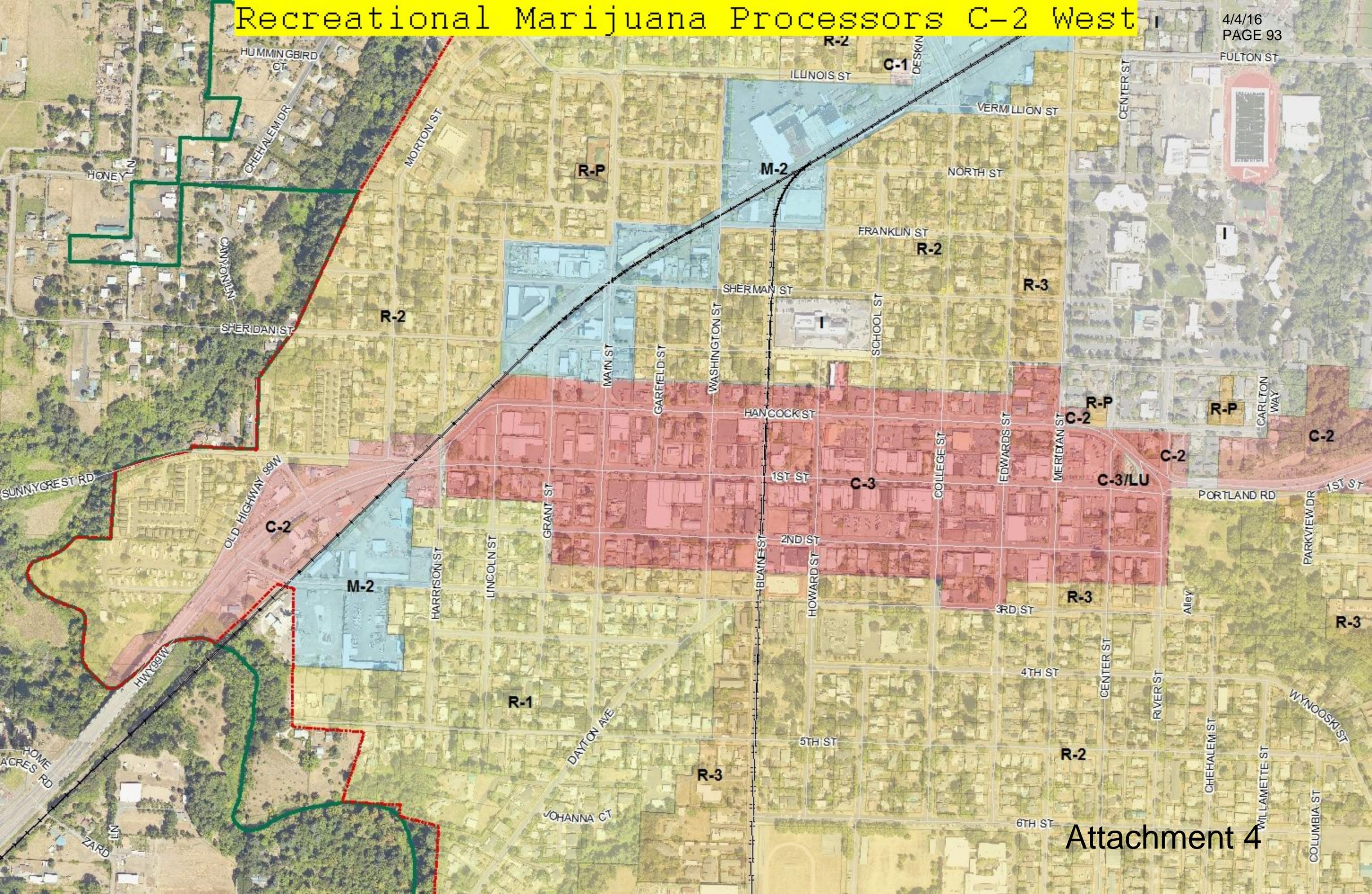
**Finding:** The city encourages new businesses to develop within the city. A Recreational Producer or Processor operation is a legal operation under State law. Allowing Recreational Marijuana Producer as a conditional use indoors in certain residential districts and subdistricts; as a permitted use indoors in industrial districts or subdistricts or as a conditional use for outdoor operations; prohibiting Recreational Marijuana Producer in commercial, community facility, institutional and airport districts and subdistricts; and allowing Recreational Marijuana Processor as a permitted use in M-1, M-2, M-3, M-4, and SD/E is consistent with this Comprehensive Plan goal.

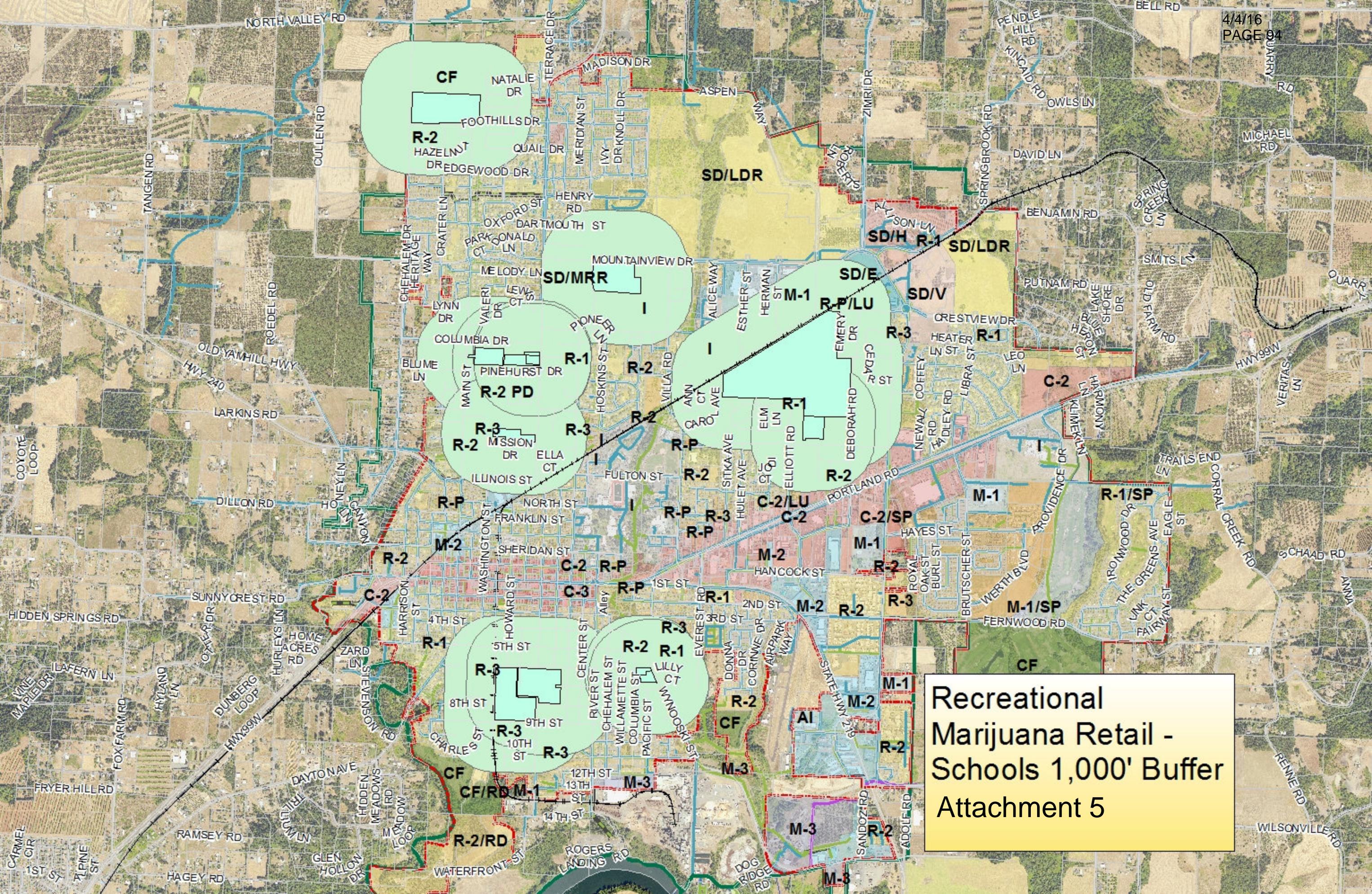
**III. Conclusion:** The proposed development code amendments meet the applicable requirements of the Statewide Planning Goals, and the Newberg Comprehensive Plan, and should be approved.

# Recreational Marijuana Processors C-2 East



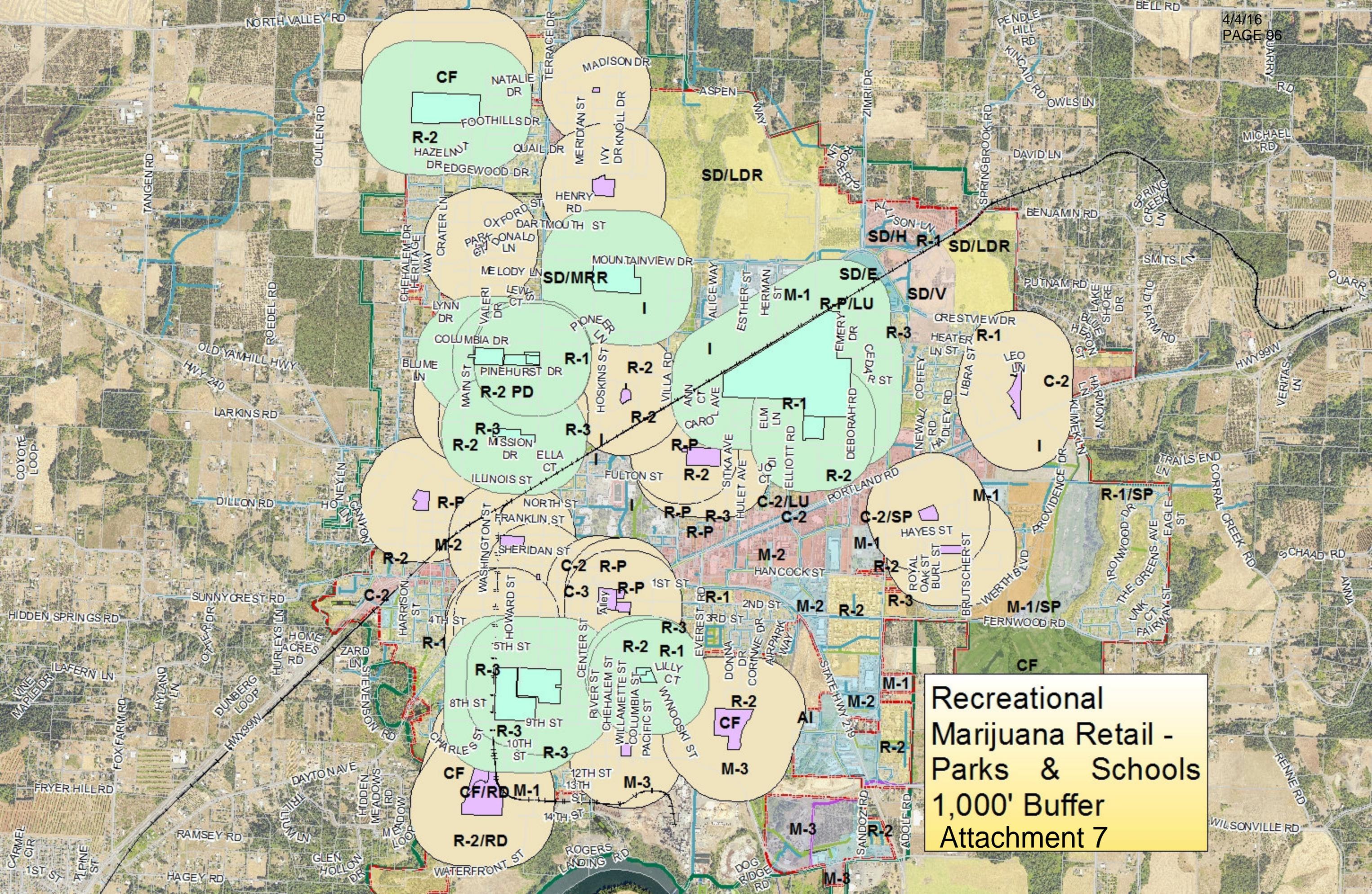
# Recreational Marijuana Processors C-2 West





Recreational  
Marijuana Retail -  
Schools 1,000' Buffer  
Attachment 5





Recreational  
Marijuana Retail -  
Parks & Schools  
1,000' Buffer  
Attachment 7

## Attachment 8

Dear Newberg City Council,

I understand you are in the process of completing rules for cannabis processing and wholesaling businesses.

I have been reviewing these rules and would like to comment on concerns regarding the zoning areas.

Currently my medical dispensary has been opened since late December. Business is brisk and we are thrilled to be a part of the community. Daily business has been quiet with no issues other than frequent inquiries from locals on when we will be able to offer products to the recreational customers.

On the same tax lot as our dispensary is an additional building that was once used as a bank. Inside of this building is a bank vault that we have future plans to use for a processing and possible wholesaling business.

In looking at the processing and wholesaling rules being considered by the city, I see that our current zoning at our "bank building" would not qualify us to use it for this. I see that these businesses are scheduled to be in outlying zones of SD/E.

I have been working with a number of cities to assist in supplying information regarding these new businesses so that rules are drafted in a way that is best for the communities. I have found that many cities don't quite understand what these businesses entail, how they are operated and the impact on the areas in which they operate.

A "processor" cannabis business accepts from growers the dried leaves or "shake" of the cannabis plant. Its the part of the plant that is left over and not used as a raw product like the "flower". (We do anticipate some "outdoor" growers of low quality product will emerge who will have as their business plan the drying of the entire top of the plant (including flower) to sell only for processing). This shake is processed down (depending on what type of license one applies to OHA or OLCC for). On one licensing track, the shake is made into food grade oils or butter – using low heat and water - for use in cooking. On the more advanced licensing track – the shake is processed to separate the plain oils – using various other methods – and these are then baked down in ovens and made into consumable extracts and edible" products.

The area within a building that might be used for this process could be as small as the size of a regular size bedroom or kitchen. 3 types of processing licenses are available: Extracts, Concentrates, and Cannabinoids. The ODA must also sign off if one is applying for a Canabanoid license since these processors are making food products in a commercial kitchen – which commercial kitchen must be licensed and inspected like any restaurant or bakery kitchen would.

The finished product from all of these processing businesses comes out smaller in size and higher in value then the flower from a cannabis plant. The vault in our bank building is an ideal secure space to store these products. We have planned climate control for the vault room as well. Additionally the back of the building has a covered overhang with a secure and private back door that a vehicle can drive right up to, to load and unload products. The building is a perfect and safe fit for a processing plant. There are no residences nearby, and the location is well lit at all times and offers a large parking area.

As very different from a growing operation, a cannabis processor has no more "smell" than a restaurant. And extraction technology has become highly technical, with setups running from \$50,000 to \$300,000 depending on the process. These are closed loop recycling systems so there are no "smokestacks" spewing fumes. And they are safe. The new rules for licensing require a host of safety measures. The few extraction explosions you hear about on the news are without exception done by black market criminals using canned cigarette lighter butane fuel. Again, that practice bears no correlation to the professional business of extraction.

In working with other cities we are also finding that the local police in those areas are supporting Processing and Wholesaling businesses in the same general locations as dispensaries because it makes patrolling and safety easier to accomplish. The man-power required to manage the safety of these businesses is significantly less when they are grouped together.

In conclusion we are asking the council to designate the zoning district of our bank building is in as an approved area for a processing licensed business. Or we request to be grand-fathered in as we have already invested significant resources and time into the building.

I hope to speak further at the meeting on March 21st and look forward to the councils comments.

Warm regards,

Sheri Ralston  
Western Oregon Dispensary  
p 503-780-4509

# *REQUEST FOR COUNCIL ACTION*

**DATE ACTION REQUESTED: April 4, 2016**

<b>Order</b> ___	<b>Ordinance</b> <u>XX</u>	<b>Resolution</b> ___	<b>Motion</b> ___	<b>Information</b> ___
<b>No.</b>	<b>No. 2016-2799</b>	<b>No.</b>		

**SUBJECT: An Ordinance annexing property located at 4016 N College Street, Yamhill County Tax Lot 3208-02900, into the Newberg City limits and withdrawing it from the Newberg Rural Fire Protection District, and changing the current zoning from Yamhill County VLDR-1 to City R-1**

**Contact Person (Preparer) for this Motion: Jessica Pelz, AICP  
Dept.: Community Development  
File No.: ANX-14-002**

**HEARING TYPE:**

**ORDER:**

**LEGISLATIVE**

**QUASI-JUDICIAL**

**RECOMMENDATION:** Adopt Ordinance No. 2016-2799 annexing property located at 4016 N College Street, Yamhill County Tax Lot 3208-02900, into the Newberg City limits and withdrawing it from the Newberg Rural Fire Protection District, and changing the current zoning from Yamhill County VLDR-1 to City R-1.

**EXECUTIVE SUMMARY:**

This is an annexation request for 2.29 acres of property that is within the Newberg urban growth boundary. The property has a Comprehensive Plan designation of LDR (Low Density Residential), which corresponds with the requested zoning of R-1 (Low Density Residential). According to the most recent analysis completed as part of the recent “Martell Commons” Comprehensive Plan Map and Zone Map amendment, the city has a deficit of 37 acres of LDR land to meet 2030 housing needs. Annexation of this property will provide additional residential development opportunities to meet future housing demands.

The biggest issue facing this application was determining whether adequate public utilities can serve the site within three years. City water and sewer lines were previously extended across this property to the North Valley Friends and Veritas properties in 2014 in accordance with a Development Agreement the city had executed with North Valley Friends in 2010. There are no issues with the new sewer line; however, the newly extended water line connects to the Oak Knoll booster pump station, which was constructed in 2000 to augment low system pressure for the 40-lot Summit at Oak Knoll subdivision [2004 *City of Newberg Water Distribution System Plan*]. Based on the size and purpose of the Oak Knoll booster pump station, the city was concerned about adequate water flows to the Rourke property to serve their future development, as well as development on the adjacent North Valley Friends and Veritas sites. The applicant hired AKS Engineering & Forestry (AKS) to explore the capacity of the Oak Knoll booster pump station and to identify any upgrades necessary to serve the future developments. AKS found that the Oak Knoll booster station would need to be upgraded to supply adequate water to Rourke, North Valley Friends, and Veritas. In addition, AKS identified the specific required improvements and provided a cost estimate for the upgrades. City staff concurs with the AKS assessment, and is confident the upgrades can be made by the applicant to serve the property consistent with the annexation requirements.

The Rourke property is accessed from Highway 219/College Street via a “non-exclusive easement for roadway purposes” over a small property owned by North Valley Friends. Future development of the Rourke property will likely necessitate dedication of right-of-way to extend a public street access into the property. Street improvements to the College Street/Highway 219 frontage will be required at the time of

development. The Planning Commission placed a condition that the applicant revise their legal description to include area to the centerline of the adjacent Highway 219 right-of-way to provide for continuity of the city limits, and this condition is carried forward on Ordinance No. 2016-2799.

State law recently changed with the passage and adoption of Oregon Senate Bill 1573, which added language to ORS 222.111 preempting Newberg's (and other cities) requirement that annexations go to a public vote, and instead directs the legislative body of a city to annex property without a public vote when the property meets certain requirements, including: being within the urban growth boundary; subject to the Comprehensive Plan of the city; contiguous to city limits; and meeting the city's adopted Development Code criteria for annexation. This property meets those criteria as outlined in Exhibit "C" to Ordinance No. 2016-2799 and will not be sent to a public vote. The City Council will make the final local decision on this application for annexation.

**FISCAL IMPACT:** No direct fiscal impact to the city other than the addition of the 2.29 acres to the property tax base.

**STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):** Approval of the proposed annexation helps further the following Council goals: #4 – "Foster and encourage economic development in the community" because the property will provide additional residential building land; and #5 – "Maintain and modernize the city's transportation and utilities infrastructure" because development of this property will require street improvements and upgrades to the Oak Knoll pump station.

**ATTACHMENTS:**

1. Planning Commission Resolution 2016-316 (with Exhibits "A", "B", and "C" by reference only and attached to Ordinance No. 2016-2799)
2. Aerial Photo
3. Concept Development Plan
4. Current Comprehensive Plan/Zoning Map
5. Application

Ordinance No. 2016-2799 with:

- Exhibit "A": Property Map
- Exhibit "B": Legal Description
- Exhibit "C": Findings

## Attachment 1


**PLANNING COMMISSION RESOLUTION 2016-316**

**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL APPROVE AN ANNEXATION OF 2.29 ACRES INTO THE CITY OF NEWBERG AND CHANGE THE ZONING FROM YAMHILL COUNTY VLDR-1 TO NEWBERG R-1, FOR PROPERTY LOCATED AT 4016 N COLLEGE STREET, TAX LOT 3208-02900**

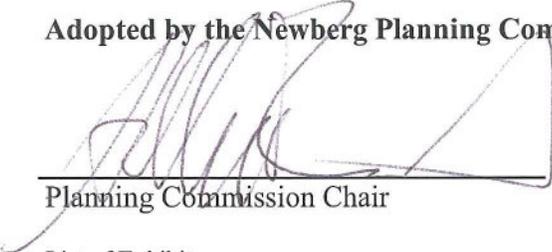
**RECITALS**

1. J. William Rourke, Jr. & Myrlene J. Rourke submitted an application to annex 2.29 acres into the City of Newberg and change the zoning from Yamhill County VLDR-1 to Newberg R-1. The property is located directly north of the current Newberg city limits on the east side of College Street/Highway 219, 4016 N. College Street, Tax Lot 3208-02900.
2. After proper notice, the Newberg Planning Commission held a hearing on March 10, 2016, to consider the application. The Commission considered testimony, and deliberated.
3. The Newberg Planning Commission finds that the application meets the applicable criteria from the Newberg Development Code as shown in the findings shown in Exhibit "C".

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

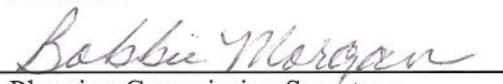
1. The Planning Commission recommends that the City Council annex the property shown in Exhibit "A" and described in Exhibit "B", along with a zone change to R-1, and withdrawal of the property from the Newberg Rural Fire Protection District. Exhibits "A" and "B" are hereby adopted and by this reference incorporated.
2. The applicant shall revise the legal description of the property to be annexed to include area to the centerline of the adjacent College Street/Highway 219 right-of-way to provide for continuity of the city limits to the west.
3. This recommendation is based on the findings shown in Exhibit "C". Exhibit "C" is hereby adopted and by this reference incorporated.

**Adopted by the Newberg Planning Commission this 10<sup>th</sup> day of March, 2016.**



\_\_\_\_\_  
 Planning Commission Chair

ATTEST:



\_\_\_\_\_  
 Planning Commission Secretary

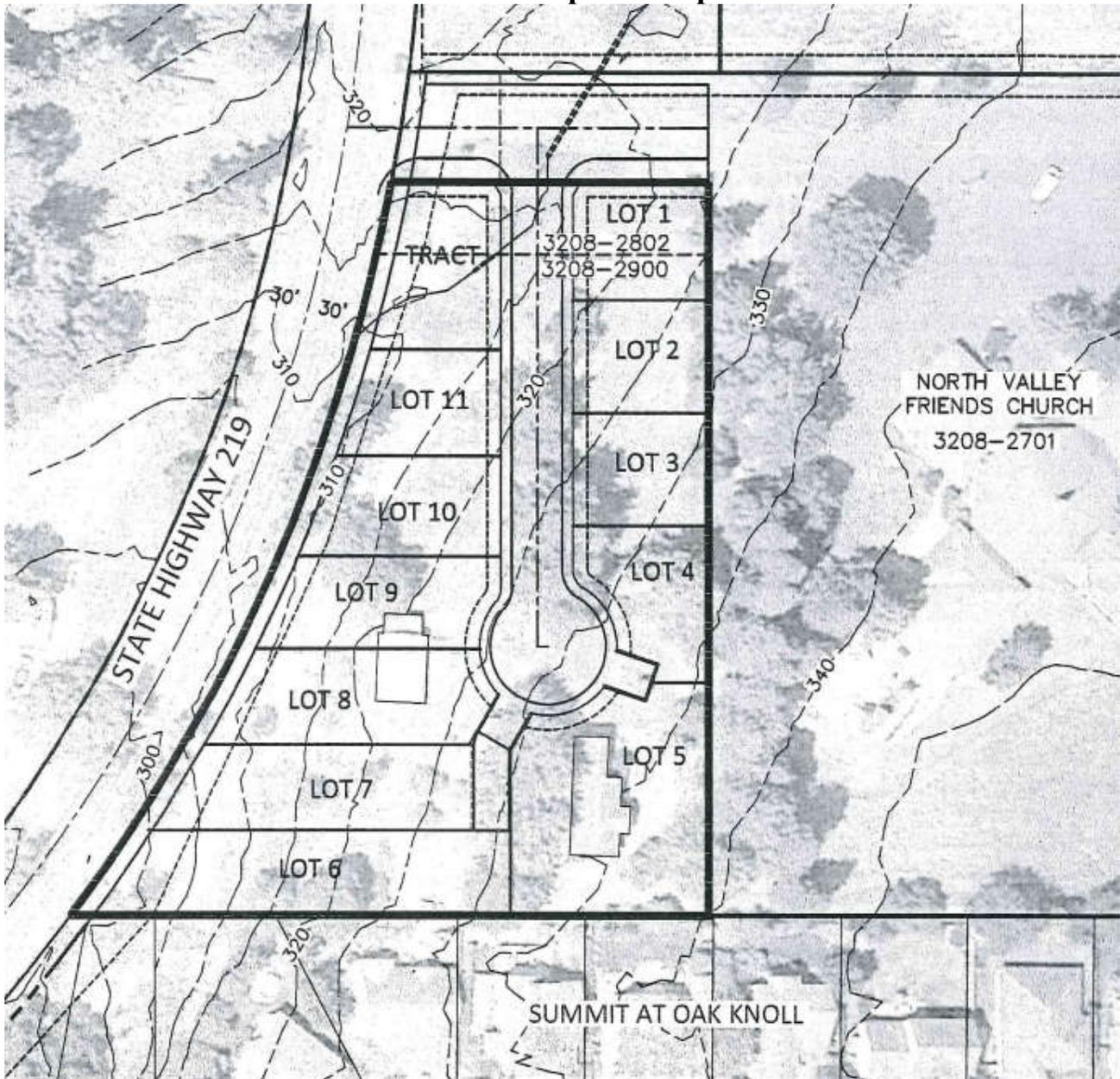
**List of Exhibits:**

- Exhibit "A": Property Map
- Exhibit "B": Legal Description
- Exhibit "C": Findings

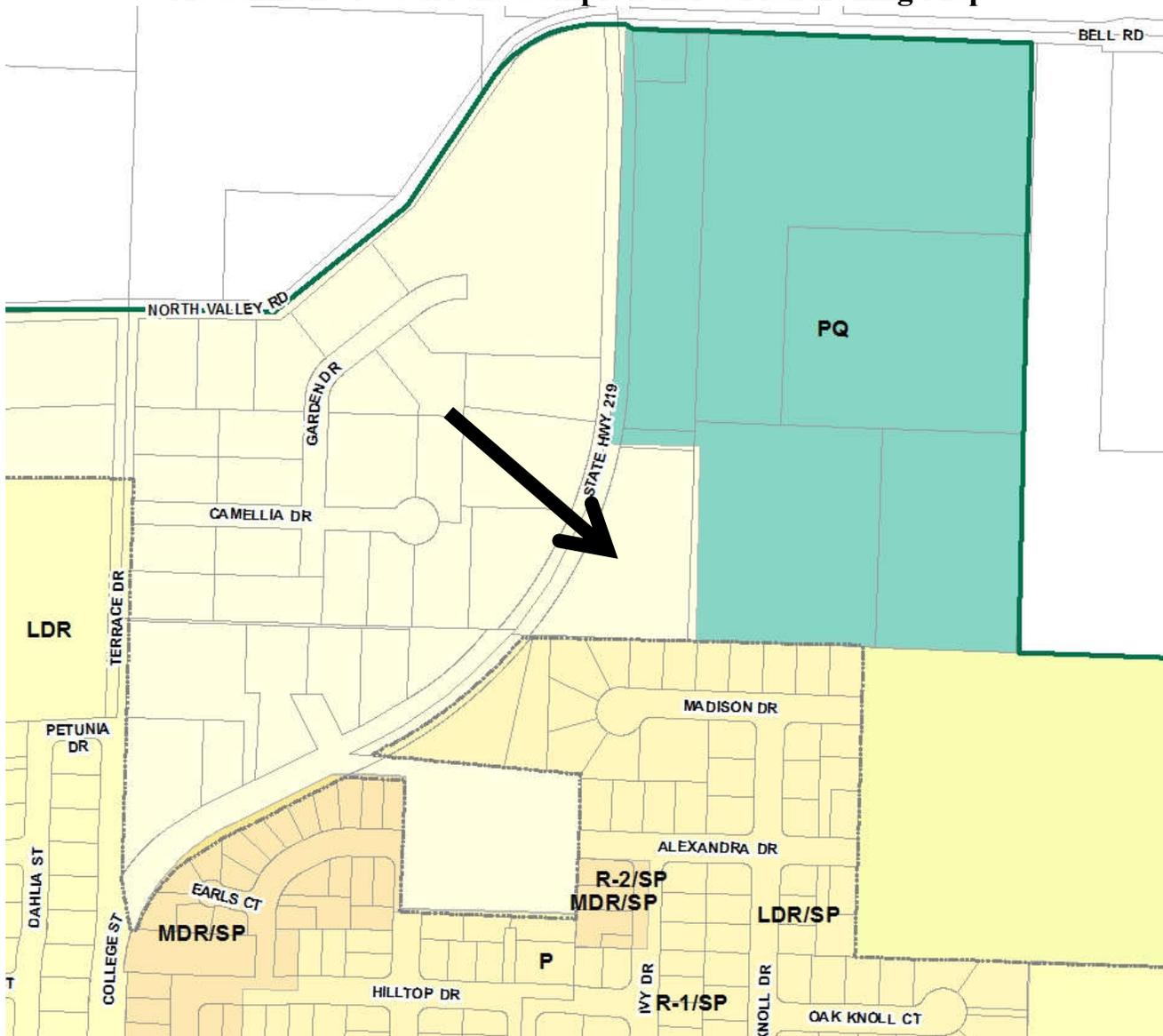
**Attachment 2: Aerial Photo**

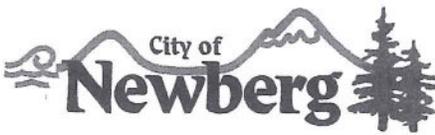


### Attachment 3: Concept Development Plan



### Attachment 4: Current Comprehensive Plan/Zoning Map





**TYPE III APPLICATION - 2013**  
**(QUASI-JUDICIAL REVIEW)**

File #: ANX-14-002

**TYPES - PLEASE CHECK ONE:**

- Annexation
- Comprehensive Plan Amendment (site specific)
- Zoning Amendment (site specific)
- Historic Landmark Modification/alteration

- Conditional Use Permit
- Type III Major Modification
- Planned Unit Development
- Other: (Explain) \_\_\_\_\_

**APPLICANT INFORMATION:**

APPLICANT: J. William Rourke, Jr. and Myrlene J. Rourke  
 ADDRESS: 1201 Fulton St. Apt 13., Newberg, OR 97132  
 EMAIL ADDRESS: mybillrourke@hotmail.com  
 PHONE: 503.538.5567 MOBILE: 503.734.5597 FAX: \_\_\_\_\_  
 OWNER (if different from above): same as above PHONE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 ENGINEER/SURVEYOR: Larry Anderson PHONE: 503.537.1110  
 ADDRESS: 112 N Springbrook Rd. Newberg, OR 97132

**GENERAL INFORMATION:**

PROJECT NAME: Rourke Property PROJECT LOCATION: 4016 N. College St., Newberg, OR 97132  
 PROJECT DESCRIPTION/USE: Subdivision - single family dwellings  
 MAP/TAX LOT NO. (i.e.3200AB-400): 3208-2900, 2802 ZONE: LDR SITE SIZE: 2.29 SQ. FT.  ACRE   
 COMP PLAN DESIGNATION: LDR TOPOGRAPHY: sloping westerly  
 CURRENT USE: Existing single family dwelling  
 SURROUNDING USES:  
 NORTH: PQ SOUTH: R2/SP  
 EAST: PQ WEST: LDR

**SPECIFIC PROJECT CRITERIA AND REQUIREMENTS ARE ATTACHED**

General Checklist:  Fees  Public Notice Information  Current Title Report  Written Criteria Response  Owner Signature

For detailed checklists, applicable criteria for the written criteria response, and number of copies per application type, turn to:

Annexation .....	p. 15
Comprehensive Plan / Zoning Map Amendment (site specific) .....	p. 19
Conditional Use Permit .....	p. 21
Historic Landmark Modification/Alteration .....	p. 23
Planned Unit Development .....	p.26

The above statements and information herein contained are in all respects true, complete, and correct to the best of my knowledge and belief. Tentative plans must substantially conform to all standards, regulations, and procedures officially adopted by the City of Newberg. All owners must sign the application or submit letters of consent. Incomplete or missing information may delay the approval process.

Myrlene Rourke  
James Rourke 9-19-14  
 Applicant Signature Date

Myrlene Rourke  
James Rourke 9-19-14  
 Owner Signature Date

J. William Rourke, Jr., Myrlene J. Rourke  
Print Name

J. William Rourke, Jr., Myrlene J. Rourke  
Print Name

Attachments: General Information, Fee Schedule, Noticing Procedures, Planning Commission Schedule, Criteria, Checklists

**Subject Property - 4016 N. College St., Newberg, OR 97132**  
**(Tax lot 3208-2900)****-2802****Development Concept Statement**

The following is the applicants' statement regarding the annexation criteria (Newberg Code 15.250.030) for annexation of 2.29 acres of territory (Yamhill County, Tax Parcel 3208-2900) located at 4016 N. College St. to the City of Newberg, Oregon.

The property is currently zoned LDR in the Comprehensive Plan.

There is an existing single family dwelling on the site that will be retained. An existing pole barn is also present and will be removed.

The property is currently within the Urban Growth Boundary and is contiguous to the existing City limits on the south side and provides an orderly growth of the City limits. The annexation will permit new development. Once developed, public and private services will be available to the residents of the annexed property. Private utilities will be provided with underground electrical, gas, telephone and cable lines.

The property is bounded on the South by the current City limits (R2/SP), on the West by property designated LDR in the Comprehensive Plan and on the North and East by property designated PQ in the Comprehensive Plan.

**The public interest is best served by referring the matter to voters in May 2015.**

**General Land Use Plan with Positive and Negative Effects**

The applicant is proposing to develop a subdivision of detached single family residential lots with a public street and utilities. The terrain necessitates a narrower than standard city street right-of-way width (with a standard street section) to efficiently develop the site. If such a plan is not approved, we would like to have the option of changing the plan to widen the right-of-way to city standards and eliminate detached single-family lots, develop zero-lot line attached homes and maintain the number of units, or develop the site as a condominium with a private street.

Traffic to and from this site will utilize a shared driveway in a 60' wide easement across North Valley Friends Church's property. The driveway and highway access will be reconstructed to meet State highway intersection and City street standards. North Valley Friends Church will dedicate public right-of-way from the highway to just beyond the new subdivision street. The development will generate

approximately 12 peak-hour vehicle trips per day. Utility easements granted along the highway for City water and sewer were written to allow a continuation of the pathway from the existing Chehalem Park and Recreation District/North Valley Friends Church trail through the property.

The land that is not part of the developed home site is currently pasture and lawn. The land will be developed in the City and will be designed to comply with Newberg's development standards.

The annexation will provide adequate land for residential development to meet the City's demand for urban development in an orderly, efficient and a timely manner. This will have a positive impact on the economy of the City by providing employment during construction and tax revenue as the homes are occupied.

The land South of the property includes currently developed and vacant properties in zone R2-SP. Land to the North and East is owned by North Valley Friends Church which uses the site for church needs. This includes playground/park, walking trail and an undeveloped park-like setting. The land West of the property is within the Newberg Urban Growth Boundary with two houses on large lots. An additional large vacant lot is now for sale.

#### **Public Facilities Financing**

The development will pay System Development Charges that contribute to parks and school facilities. Taxes from the development will help to provide police, fire and other required services.

#### **Annexation Criteria**

**The following conditions must be met prior to or concurrent with city processing of any annexation request:**

- **The subject site must be located within the Newberg Urban Growth Boundary or Newberg Urban Reserve Areas.**
- **the subject site must be contiguous to the existing city limits**

**Response:** The property is currently within the Newberg Urban Growth Boundary and is contiguous to the existing City limits on the south side.

**(A) The proposed use for the site complies with the Newberg comprehensive plan and with the designation on the Newberg comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Newberg comprehensive plan.**

**Response -** The applicant is requesting no change in the City designation of LDR.

**(B) An adequate level of urban services must be available, or made available, within three years time of annexation. An adequate level of urban services shall be defined as :**

**(1) Municipal sanitary sewer and water service meeting the requirements enumerated in the Newberg comprehensive plan for provision of these services.**

**(2) Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three year time period, the city shall note requirements such as dedication of right-of-way, waiver of remonstrance against assessment for road improvement costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. the city shall also consider public costs for improvement and the ability of the city to provide for those costs.**

**Response** - Municipal sanitary sewer and water service which meet the requirements in the comprehensive plan have recently been completed on the site. As part of the extension of those services to the site of the proposed Veritas School, easements were granted and City approved access for both water and sewer services are in place now.

Roads and adequate parking will be provided as required by City codes. Access to existing City sidewalks and walking trail on the North Valley Friends Church property will be provided.

**(C) Findings documenting the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.**

**Response** - The Newberg School District provides public education facilities. Their master plan provides for growth in the district and has options to meet the demand.

Other private and public service providers supply garbage, telephone, television, postal and internet services as needed by the development. The City will determine any additional public services and facilities that may be required at the time development permits are requested.

The development will pay System Development charges that contribute to parks and school facilities. Taxes from the development will help to provide police, fire and other required services.

April 1, 2015

**Further Response to Preliminary Completeness Review**

**Rourke Annexation - ANX-14-002**

To: City of Newberg Planning Department

We believe that you should recommend approval of our annexation application. Our rationale is based on the following:

- Fire flow testing performed on March 9, 2015 provided the evidence that there is an adequate supply of water to the most distant fire hydrant on the Veritas School site.
- The current pump station has some risk if the pumps become non-functional.
  - The additional risk associated with increasing the number of homes supplied from 40 to 51 is minimal.
  - Two pumps for domestic water use, a separate pump for fire protection and a backup generator provide adequate safety until the new storage reservoir is constructed.
  - The property to be annexed is largely at just over 300 feet elevation. It is lower in elevation than many of the homes in the Oak Knoll subdivision.
  - There would be no increase in maintenance costs for the pump station.
- The City has the right to make an exception to the 40 unit limitation mentioned above. The Master Plan indicates that " **The City may choose to operate the system within these zones without storage for a period of time**, however, as growth occurs, a storage reservoir will be required." (ES.8.4).
- We are happy to construct the necessary infrastructure on our site to accommodate transfer of the water supply from the pump station to the new storage reservoir when it is constructed.
- We are happy to be included in any future service district that might be created to pay for the new storage reservoir.
- Finally, approving this water supply plan will benefit the City with negligible risk.
  - Increased revenues from SDC, property taxes and utility fees will be seen.
  - No additional maintenance of the pump station will be required.
  - The incremental risk associated with increasing the number of homes added to the pump station is minimal.

Anticipating a favorable response,

Bill Rourke



AKS ENGINEERING & FORESTRY, LLC  
12965 SW Herman Road, Suite 100, Tualatin, OR 97062  
P: (503) 563-6151 F: (503) 563-6152

OFFICES IN: TUALATIN, OR - VANCOUVER, WA - SALEM-KEIZER, OR

## MEMORANDUM

**DATE:** November 16, 2015  
**TO:** Kaaren Hofmann, PE – City Engineer  
**FROM:** John P. Christiansen, PE – AKS Engineering & Forestry, LLC  
**CC:** Bill Rourke - Owner  
**SUBJECT:** Oak Knoll Booster Pump Upgrade - Revised  
**PROJECT:** 4016 N College Street (AKS #4612)



RENEWAL DATE: 12/31/17

### BACKGROUND

The owner of the property located at 4016 N College Street is pursuing the development of a single-family residential subdivision on the subject property (TL 2900 Map 3.2.08). Prior to involvement by AKS Engineering & Forestry, LLC (AKS), the owner met with the City of Newberg Planning and Engineering Staff to discuss the annexation and development process. At that time, the City identified water capacity limitations of the Oak Knoll booster pump station. The City has long-term plans for the capital improvements that support development of the subject property; however, the timing of such improvements has not yet been determined.

Hydrant flow tests were completed on existing hydrants adjacent to the subject property, (3/19/2015), which documented projected fire flow rates of 1,693 gpm and 2,272 gpm, at 20 PSI. It is our understanding that the City is satisfied with the fire flow available to the subject property.

The purpose of this memorandum is to present recommendations for upgrades to the Oak Knoll booster pumps to meet the domestic water needs of the proposed development and document the criteria by which the upgrades are designed.

### EXISTING SYSTEM OVERVIEW

According to the *2004 City of Newberg Water Distribution System Plan*, the Oak Knoll water system booster pump station was constructed in 2000 to augment low system pressures for home sites within a portion of The Summit at Oak Knoll development, a 40-lot single-family residential subdivision. The Oak Knoll booster system comprises three pumps in parallel to meet low-flow (10 gpm), high flow (250 gpm), and fire-flow (1,000 gpm) demands. Based on discussions with the City, we understand the domestic pumps function in an alternating lead/lag sequence.

The boosters feed an 8" distribution line that extends through The Summit at Oak Knoll development to N. College Street (OR HWY 219) and ultimately to its terminus on the Veritas property (TL 2702). The existing 8" water main parallels the westerly and northerly boundaries of the subject property.

**DESIGN CRITERIA**

The *City of Newberg Public Works Design and Construction Standards* identifies that for single-family residential areas, the minimum pressure shall be 40 PSI measured at the meter and the minimum fire flow shall be 1,000 gpm with a 20 PSI residual. Since the standards do not specify a design rate for domestic use, a proportionate rate for the existing Oak Knoll booster was utilized as an estimate. Calculations are as follows:

- Existing booster domestic use capacity = 250-gpm for 40-single family homes; = 6.25-gpm/lot

The City has also expressed concern about increased line velocity resulting from the pump upgrade. The City's public work standards do not specify a maximum line velocity; therefore, a maximum line velocity of 7 fps is assumed for cement lined ductile iron pipe and is targeted for this design.

The owner has requested the booster upgrades consider domestic water demands for adjacent properties. AKS and the owner have communicated with both the North Valley Friends Church (TL 2701 and 2703) and the Veritas School (TL 2700, 2702, and 2800) to understand their existing and future water system needs. Water system demands for the North Valley Church were evaluated based on the Oregon Plumbing Specialty Code (OPSC) and are provided as an attachment to this memorandum. The Veritas School did not wish to participate in this booster pump upgrade study; however, per the request of the City, the pump upgrade study includes development anticipated at the Veritas School property.

**DESIGN CALCULATIONS**

The owner is proposing the development of 11 single-family residential lots. Based on the design criteria outlined above, this will result in an increased peak demand on the pumps of approximately 70 gpm.

The North Valley Friends Church provided a list of all appliances, appurtenances, or fixtures within their existing facilities. A total fixture count was calculated based on 2014 OPSC, Appendix A, Table A-2. The fixture count resulted in a water system demand of 41 gpm, per 2014 OPSC, Appendix A, Table A-3. Detailed calculations are provided as an attachment to this memorandum.

The Veritas School has developed a master plan for their campus which will be developed in two phases. Total fixture counts for each phase were provided to AKS by representatives of Veritas, via the City of Newberg. Note, some of the fixtures associated with phase 2 will replace fixtures installed with phase 1. The fixture count resulted in a water system demand of 60 gpm, per 2014 OPSC, Appendix A, Table A-3. Detailed calculations are provided as an attachment to this memorandum.

Accounting for the proposed 11-lot development, the North Valley Friends Church, and both phases of the Veritas School development, the total peak demand on the Oak Knoll booster would be as follows:

$$250 \text{ gpm} + 70 \text{ gpm} + 41 \text{ gpm} + 60 \text{ gpm} = \mathbf{421 \text{ gpm}}$$

Total Dynamic Head (THD) for the booster is calculated as follows:

$H_T = H_F + H_L + H_E$		
$H_F = (10.44 * (L * Q^{1.85}) / (C^{1.85} d^{4.87})) = \text{Hazen-Williams}$		$H_L = \sum K(V^2)/2g$
Q = Flow (gpm)	d = Pipe Diameter (in)	K = Minor Loss Coefficient
L = Pipe Length (ft)	$H_E = \text{Energy/Static Head}$	V = Velocity (fps)
C = Pipe Coefficient (120 for CL DI pipe)		

Assumptions:

Length of main from Booster to subject

property = ~2,000-ft

Q = 421-gpm

d = 8-in

 $H_L = 0$ 

Existing Booster Elevation = 290-ft

Maximum Service Elevation = 340-ft

Minimum Service Pressure = 40-PSI = 92.3-ft

$$H_F = (10.44 * (2,000\text{-ft}) * (421^{1.85})) / (120^{1.85} 8\text{-in}^{4.87}) = 8.5\text{-ft}$$

$$H_E = 340\text{-ft} - 290\text{-ft} + 92.3\text{-ft} = 142.3\text{-ft}$$

$$H_T = 8.5\text{-ft} + 142.3\text{-ft} = 150.8\text{-ft} \sim \mathbf{151\text{-ft TDH}}$$

The maximum line velocity will occur under fire flow conditions (1,000 gpm). The proposed development will not result in an increase to the fire flow rate; therefore, this design criteria does not apply. The line velocity for the peak domestic demand is summarized as follows:

Q=VA; where

Q = Flow Rate (cfs)

V = Velocity (fps)

A = Area (sf)

Assumptions:

Q = 421-gpm = 0.94-cfs (peak flow)

A = 8" CL DI Class 52 = 0.38 sf

$$V_{PEAK} = 0.80\text{-cfs}/0.38\text{-sf} = \mathbf{2.5\text{ fps}}$$

The pump capacity of the Oak Knoll Booster station must be increased to **421 gpm @ 151 ft TDH**.

**UPGRADE RECOMMENDATIONS**

AKS engaged Triangle Pump and Equipment, Inc., the supplier of the original equipment in the Oak Knoll booster station, to evaluate the feasibility of upgrading the existing system to meet the increased demands. Triangle Pump confirmed the domestic system's booster pumps can be upgraded within the framework of the existing facility. Upgrades are anticipated to include Goulds Close-Coupled End-Suction pumps coupled with 30 HP motors. Variable-frequency drives will also be integrated into the upgrade to reduce motor wear and electrical load at pump start-up. Pump curves for the proposed pumps are provided in the submittal by Triangle Pump, which is attached to this memorandum.

**CONCLUSION AND REQUEST FOR APPROVAL**

As outlined above, the existing Oak Knoll water system booster pump can be upgraded to supply water to the proposed 11-lot residential development as well as support the existing North Valley Friends Church facilities and future Veritas School development. The owner is requesting approval of concept for the booster pump upgrades and confirmation that the upgrades will address the City's concerns regarding the availability of domestic water to support the proposed annexation and development.

## Attachments:

Exhibit A – Water System Map – 4016 N. College Street

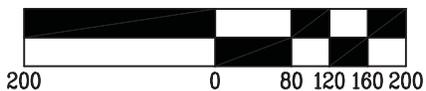
Existing Domestic Water Demands – North Valley Friends Church

Veritas School Domestic Water Demand Calculations

Submittal by Triangle Pump &amp; equipment, Inc.



SCALE 1" = 200 FEET



NOTE: IMAGE SOURCE AND UTILITY MAPPING SOURCE IS THE CITY OF NEWBERG GIS SYSTEM. SCALE IS APPROXIMATE.

DATE: 7/22/215

<b>WATER SYSTEM MAP</b> <b>4016 N. COLLEGE STREET</b>		EXHIBIT <b>A</b>
AKS ENGINEERING & FORESTRY, LLC 12965 SW HERMAN RD, STE 100 TUALATIN, OR 97062 P: 503.563.6151 F: 503.563.6152 aks-eng.com		DRWN: JPC CHKD: JPC AKS JOB: 4612





PROJECT NO. 4612

PROJECT NAME 4016 N College Street

DATE/TIME 7/16/15

SUBJECT Domestic Water Flow Demands Calculation

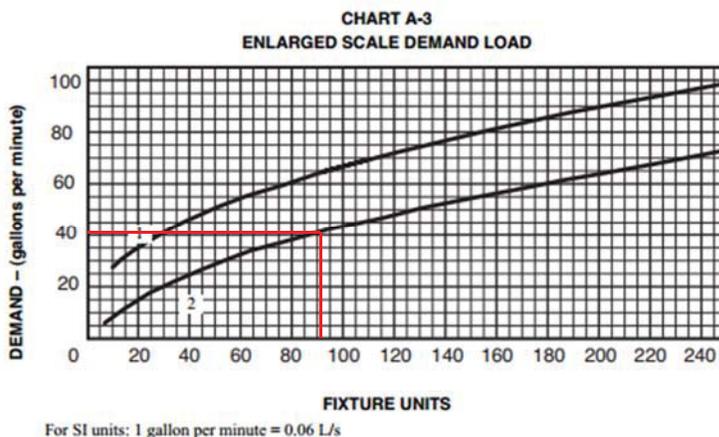
BY LTP

The following summarizes the domestic water system demands for the North Valley Friends Church located at 4020 N College Street, Newberg, OR.

**Existing Domestic Water Demands:**

FIXTURE	NUMBER	WATER FIXTURE UNITS	
		EACH	TOTAL
TOILETS	13	2.5	32.5
URINALS	3	2.0	6
SINKS	20	1.5	30
WATER FOUNTAINS	3	0.5	1.5
SHOWERS	3	2.0	6
SHOWER/TUB	1	4.0	4
HOSE BIBB (1ST)	1	2.5	2.5
HOSE BIBB (EACH ADDITIONAL)	6	1.0	6
DISH WASHER	2	1.5	3
<b>TOTAL WATER FIXTURE UNITS</b>			<b>91.5</b>

- Assumed:
  - Private values for fixtures
  - Kitchen/domestic sinks
  - Flush tank urinals
  - 1.6 GPF Gravity Tank water closets
- Total water fixture units: 91.5 per 2014 OPSC Table A-2
- Building demand determined per 2014 OPSC Chart A-3
- **Total Domestic Water Demand: 41.0 GPM**



**TABLE A-2  
WATER SUPPLY FIXTURE UNITS (WSFU) AND MINIMUM FIXTURE BRANCH PIPE SIZES<sup>3</sup>**

APPLIANCES, APPURTENANCES, OR FIXTURES <sup>2</sup>	MINIMUM FIXTURE BRANCH PIPE SIZE <sup>1,4</sup> (inches)	PRIVATE	PUBLIC	ASSEMBLY
Bathtub or Combination Bath/Shower (fill)	½	4.0	4.0	–
¾ inch Bathtub Fill Valve	¾	10.0	10.0	–
Bidet	½	1.0	–	–
Clothes Washer	½	4.0	4.0	–
Dental Unit, cuspidor	½	–	1.0	–
Dishwasher, domestic	½	1.5	1.5	–
Drinking Fountain or Water Cooler	½	0.5	0.5	0.75
Hose Bibb	½	2.5	2.5	–
Hose Bibb, each additional <sup>6</sup>	½	1.0	1.0	–
Lavatory	½	1.0	1.0	1.0
Lawn Sprinkler, each head <sup>5</sup>	–	1.0	1.0	–
Mobile Home, each (minimum)	–	12.0	–	–
Sinks	–	–	–	–
Bar	½	1.0	2.0	–
Clinic Faucet	½	–	3.0	–
Clinic Flushometer Valve with or without faucet	1	–	8.0	–
Kitchen, domestic	½	1.5	1.5	–
Laundry	½	1.5	1.5	–
Service or Mop Basin	½	1.5	3.0	–
Washup, each set of faucets	½	–	2.0	–
Shower per head	½	2.0	2.0	–
Urinal, 1.0 GPF Flushometer Valve	¾	3.0	4.0	5.0
Urinal, greater than 1.0 GPF Flushometer Valve	¾	4.0	5.0	6.0
Urinal, flush tank	½	2.0	2.0	3.0
Wash Fountain, circular spray	¾	–	4.0	–
Water Closet, 1.6 GPF Gravity Tank	½	2.5	2.5	3.5
Water Closet, 1.6 GPF Flushometer Tank	½	2.5	2.5	3.5
Water Closet, 1.6 GPF Flushometer Valve	1	5.0	5.0	8.0
Water Closet, greater than 1.6 GPF Gravity Tank	½	3.0	5.5	7.0
Water Closet, greater than 1.6 GPF Flushometer Valve	1	7.0	8.0	10.0

For SI units: 1 inch = 25 mm

**Notes:**

- <sup>1</sup> Size of the cold branch pipe, or both the hot and cold branch pipes.
- <sup>2</sup> Appliances, appurtenances, or fixtures not included in this table shall be permitted to be sized by reference to fixtures having a similar flow rate and frequency of use.
- <sup>3</sup> The listed fixture unit values represent their total load on the cold water building supply. The separate cold water and hot water fixture unit value for fixtures having both cold and hot water connections shall be permitted to each be taken as three-quarters of the listed total value of the fixture.
- <sup>4</sup> The listed minimum supply branch pipe sizes for individual fixtures are the nominal (L.D.) pipe size.
- <sup>5</sup> For fixtures or supply connections likely to impose continuous flow demands, determine the required flow in gallons per minute (gpm) (L/s) and add it separately to the demand in gpm (L/s) for the distribution system or portions thereof.
- <sup>6</sup> Reduced fixture unit loading for additional hose bibbs is to be used where sizing total building demand and for pipe sizing where more than one hose bibb is supplied by a segment of water distribution pipe. The fixture branch to each hose bibb shall be sized on the basis of 2.5 fixture units.



PROJECT NO. 4612

PROJECT NAME 4016 N College Street

DATE/TIME 09/01/2015

SUBJECT Veritas School Domestic Water Demands Calculation

BY LTP

The following is a summary of the water system demands for Phases I and II for the “A Time to Build Campaign” for the Veritas School, located at 401 Mission Drive in Newberg, Oregon.

### Phase I

- Fixture Units – values determined by others
  - Main building: 87
  - Modular buildings: 90
  - Total fixture units: 177
- Phase I domestic water demand determined per 2014 OPSC, Chart A-3 (included on next page)

**Phase I domestic water demand: 59.0 GPM**

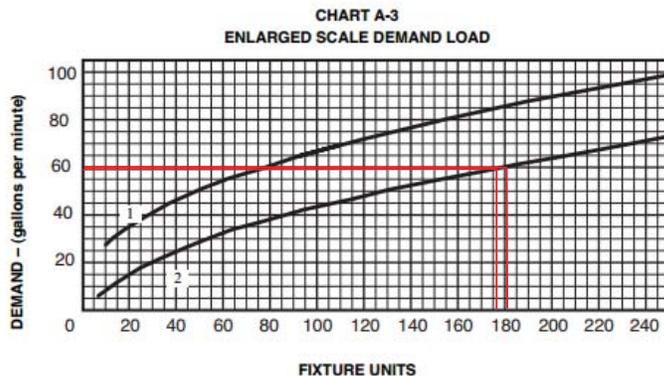
### Phase II

Phase II includes main building from Phase I, with the modular buildings being removed.

FIXTURE	NUMBER	WATER FIXTURE UNITS	
		EACH	TOTAL
WATER CLOSET	20	2.5	50.0
URINAL	7	2.0	14.0
LAVATORY	26	1.0	26.0
DRINKING FOUNTAIN	9	0.5	4.5
TOTAL WATER FIXTURE UNITS			94.5

- Assumed:
  - Public values for all fixtures
  - 50% of required water closets replaced by urinals in male restrooms
  - Flush tank urinals
  - 1.6 GPF flush tank water closets
- New water fixture units for Phase II: 94.5 per 2014 OPSC, Table A-2 (included on next page)
- New domestic water demand for Phase II: 42.0 GPM per 2014 OPSC, Chart A-3
- Total Phase II water fixture units (Phase I main building + new for Phase II): 181.5
- Total Phase II domestic water demand determined per 2014 OPSC, Chart A-3

**Phase II domestic water demand: 60.0 GPM**



**TABLE A-2  
WATER SUPPLY FIXTURE UNITS (WSFU) AND MINIMUM FIXTURE BRANCH PIPE SIZES<sup>3</sup>**

APPLIANCES, APPURTENANCES, OR FIXTURES <sup>2</sup>	MINIMUM FIXTURE BRANCH PIPE SIZE <sup>1,4</sup> (inches)	PRIVATE	PUBLIC	ASSEMBLY
Bathtub or Combination Bath/Shower (fill)	½	4.0	4.0	–
¼ inch Bathtub Fill Valve	¾	10.0	10.0	–
Bidet	½	1.0	–	–
Clothes Washer	½	4.0	4.0	–
Dental Unit, cuspidor	½	–	1.0	–
Dishwasher, domestic	½	1.5	1.5	–
Drinking Fountain or Water Cooler	½	0.5	0.5	0.75
Hose Bibb	½	2.5	2.5	–
Hose Bibb, each additional <sup>6</sup>	½	1.0	1.0	–
Lavatory	½	1.0	1.0	1.0
Lawn Sprinkler, each head <sup>5</sup>	–	1.0	1.0	–
Mobile Home, each (minimum)	–	12.0	–	–
Sinks	–	–	–	–
Bar	½	1.0	2.0	–
Clinic Faucet	½	–	3.0	–
Clinic Flushometer Valve with or without faucet	1	–	8.0	–
Kitchen, domestic	½	1.5	1.5	–
Laundry	½	1.5	1.5	–
Service or Mop Basin	½	1.5	3.0	–
Washup, each set of faucets	½	–	2.0	–
Shower per head	½	2.0	2.0	–
Urinal, 1.0 GPF Flushometer Valve	¾	3.0	4.0	5.0
Urinal, greater than 1.0 GPF Flushometer Valve	¾	4.0	5.0	6.0
Urinal, flush tank	½	2.0	2.0	3.0
Wash Fountain, circular spray	¾	–	4.0	–
Water Closet, 1.6 GPF Gravity Tank	½	2.5	2.5	3.5
Water Closet, 1.6 GPF Flushometer Tank	½	2.5	2.5	3.5
Water Closet, 1.6 GPF Flushometer Valve	1	5.0	5.0	8.0
Water Closet, greater than 1.6 GPF Gravity Tank	½	3.0	5.5	7.0
Water Closet, greater than 1.6 GPF Flushometer Valve	1	7.0	8.0	10.0

For SI units: 1 inch = 25 mm

**Notes:**

- <sup>1</sup> Size of the cold branch pipe, or both the hot and cold branch pipes.
- <sup>2</sup> Appliances, appurtenances, or fixtures not included in this table shall be permitted to be sized by reference to fixtures having a similar flow rate and frequency of use.
- <sup>3</sup> The listed fixture unit values represent their total load on the cold water building supply. The separate cold water and hot water fixture unit value for fixtures having both cold and hot water connections shall be permitted to each be taken as three-quarters of the listed total value of the fixture.
- <sup>4</sup> The listed minimum supply branch pipe sizes for individual fixtures are the nominal (I.D.) pipe size.
- <sup>5</sup> For fixtures or supply connections likely to impose continuous flow demands, determine the required flow in gallons per minute (gpm) (L/s) and add it separately to the demand in gpm (L/s) for the distribution system or portions thereof.
- <sup>6</sup> Reduced fixture unit loading for additional hose bibbs is to be used where sizing total building demand and for pipe sizing where more than one hose bibb is supplied by a segment of water distribution pipe. The fixture branch to each hose bibb shall be sized on the basis of 2.5 fixture units.



# Submittal Data

## 3656 M&L Bronze Fitted End Suction Cast Iron Pumps MODEL : 14BF2P5B0

Hydraulic Data					Motor Data	3656/3756 M L Group	Qty.
Maximum Flow	Flow at Duty Point	Maximum TDH	TDH at Duty Point	NPSH <sub>r</sub>	Voltage / Phase / Enclosure	Model	
862 US g.p.m.	425 US g.p.m.	169 ft	151 ft	5 ft	460V 3PH PE-TEFC	14BF2P5B0	1

Submittal Prepared for: \_\_\_\_\_ Job: \_\_\_\_\_  
 Engineer: \_\_\_\_\_ Contractor: \_\_\_\_\_  
 Submittal Prepared by: \_\_\_\_\_ Company: \_\_\_\_\_  
 Submittal Date: 2015-10-28 Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

### Engineering Data

Pump Code: 14BF2P5B0  
 Pump Size: 3 x 4 - 13  
 Pump Max Horsepower: 29.915 hp  
 Pump Horsepower at Rating Point: 21.52 hp  
 Pump Shut Off Head: 169 ft  
 Motor Speed: 1780 rpm  
 Max. Temperature: 212 °F  
 Liquid: Water, pure  
 Motor Code: C15732PE  
 System Input Power: 3~ 460 V  
 Motor Rated Horsepower: 25.00 hp  
 Max. Frequency: 60  
 Electrical Enclosures: TEFC/Prem ...  
 Motor Standard: NEMA  
 Suction Flange Standard: ANSI  
 Suction Flange Rating: Class 125  
 Suction Size: 4"  
 Discharge Flange Standard: ANSI  
 Discharge Flange Rating: Class 125  
 Discharge: 3"  
 Approximate Net Weight: 527 lb  
 Impeller Size: 12<sup>9</sup>/<sub>16</sub>"  
 Impeller Construction: Closed  
 Impeller Type: Radial impeller  
 Impeller Material:  
 ASTM B584, Modified C87500-Lead Free  
 Sense of Rotation: Clockwise from the drive end  
 Shaft Seal: Carbon/Ceramic/BUNA

### Standard Equipment / Capability:

The 3656 and 3756 M & L-Group pumps from Goulds have been designed with technical benefits to meet the needs of users in a variety of water supply, recirculation, and cooling applications.

- The model 3656 offers close coupled design for space saving and simplified maintenance.
- The model 3756 offers a bearing frame mounted design for flexibility of installation and drive arrangements.
- SAE drive sizes 1 through 5 available on all pumps.
- Back pull-out to reduce maintenance down time.
- Standard Type 21 mechanical seal for both reliability and availability. Carbon/ceramic/ BUNA standard, with other faces and elastomers available.
- Available in packed stuffing box design with Teflon™ impregnated packing, split Teflon lantern ring, tapped flush connection and 2 piece investment cast interlocking gland, all standard.
- Available in all iron or bronze fitted construction for application versatility.
- Replaceable wearing components include stainless steel shaft sleeve and casing and hub wear rings to maintain peak efficiency.
- Enclosed impeller design, dynamic balancing and renewable wear rings reduce losses affecting performance and pump life.
- 125 Class ANSI flange suction/ discharge connections and casing rotation for piping connection versatility.
- NPT threaded connections are supplied on 1 1/2 x 2 – 10 and 2 1/2 x 3 – 8 models.
- Optional rigid carbon steel bedplate, sheet metal coupling guard and T. B. Woods spacer coupling for 3756 models.
- Standard NEMA motor frame, JM shaft extension (mechanical seal) JP shaft extension (packed box), C face mounting, single phase or three phase, 3500 or 1750 RPM for 60 Hz, 2900 or 1450 RPM for 50 Hz. Open drip-proof and totally enclosed fan cooled.
- Optional explosion proof and high efficiency motors are available.

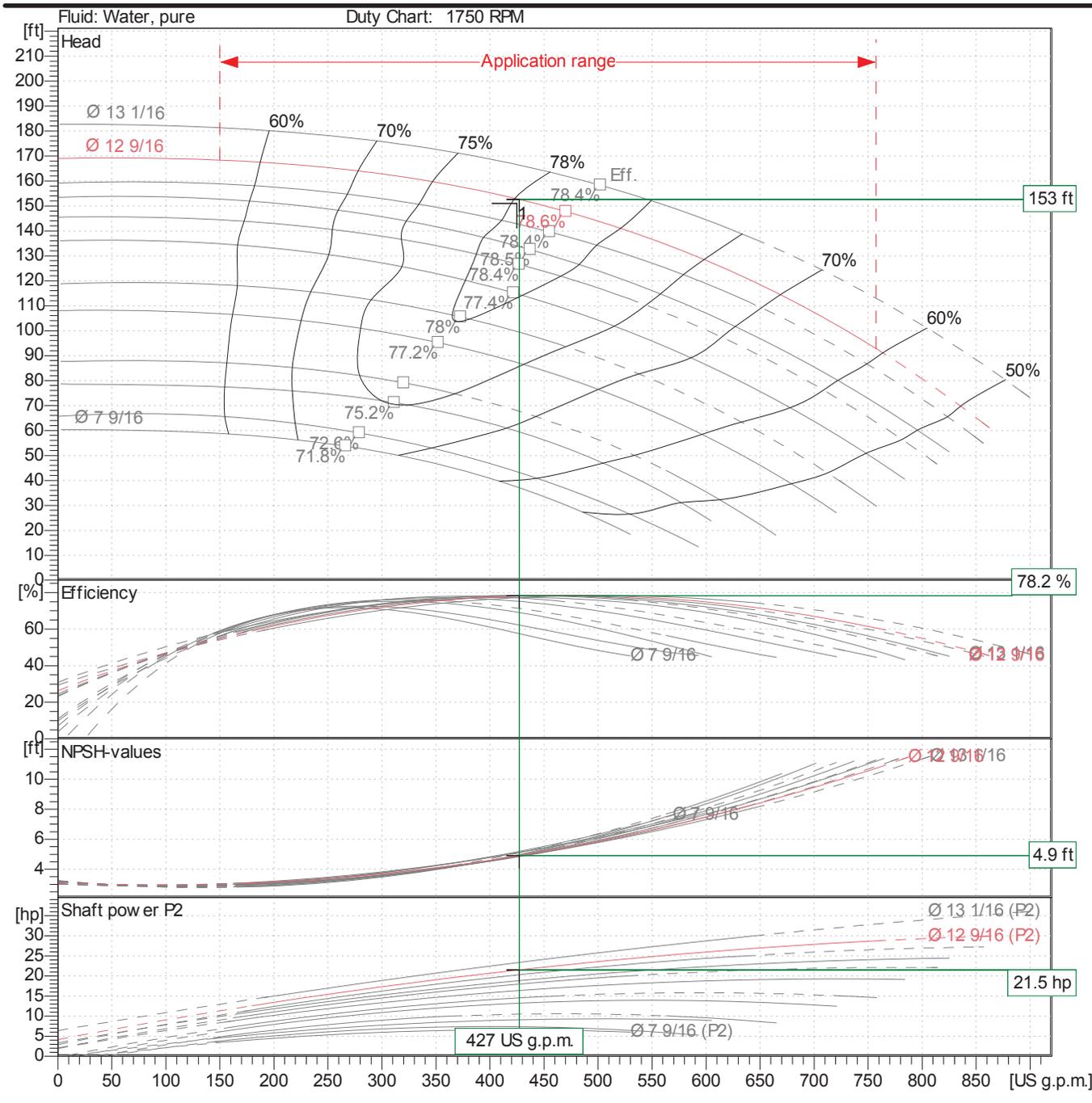


# Performance Data

## 3656 M&L Bronze Fitted End Suction Cast Iron Pumps MODEL : 14BF2P5B0

Hydraulic Data					Motor Data		3656/3756 M L Group Model	Qty.
Maximum Flow	Flow at Duty Point	Maximum TDH	TDH at Duty Point	NPSH <sub>r</sub>	Voltage / Phase / Enclosure			
862 US g.p.m.	425 US g.p.m.	169 ft	151 ft	5 ft	460V 3PH PE-TEFC		14BF2P5B0	1

Submittal Prepared for: \_\_\_\_\_ Job: \_\_\_\_\_  
 Engineer: \_\_\_\_\_ Contractor: \_\_\_\_\_  
 Submittal Prepared by: \_\_\_\_\_ Company: \_\_\_\_\_  
 Submittal Date: 2015-10-28 Approved by: \_\_\_\_\_ Date: \_\_\_\_\_



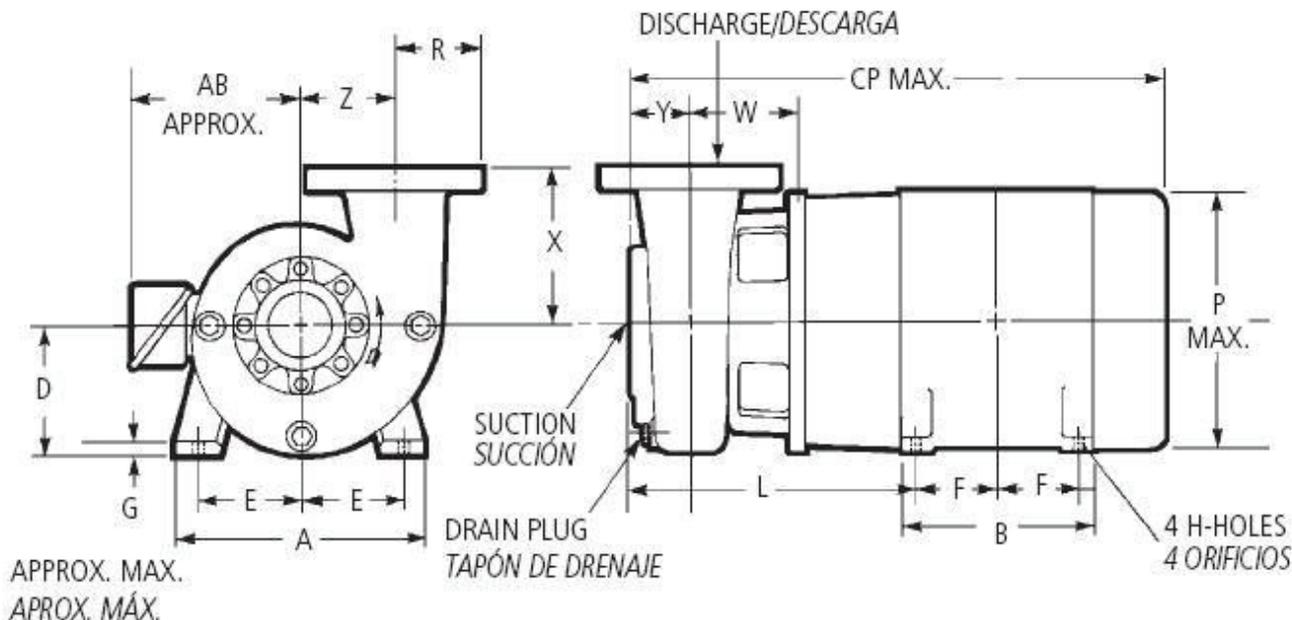


# Unit Dimensions

## 3656 M&L Bronze Fitted End Suction Cast Iron Pumps MODEL : 14BF2P5B0

Hydraulic Data					Motor Data	3656/3756 M L Group Model	Qty.
Maximum Flow	Flow at Duty Point	Maximum TDH	TDH at Duty Point	NPSH <sub>r</sub>	Voltage / Phase / Enclosure		
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Submittal Prepared for: \_\_\_\_\_ Job: \_\_\_\_\_  
 Engineer: \_\_\_\_\_ Contractor: \_\_\_\_\_  
 Submittal Prepared by: \_\_\_\_\_ Company: \_\_\_\_\_  
 Submittal Date: 2015-10-28 Approved by: \_\_\_\_\_ Date: \_\_\_\_\_



Dimension	Value	Dimension	Value
AB max	5 <sup>7</sup> / <sub>8</sub>	H	1/2
B	10 <sup>3</sup> / <sub>4</sub>	L	12 <sup>3</sup> / <sub>4</sub>
CP max	33 <sup>1</sup> / <sub>4</sub>	P max	13 <sup>1</sup> / <sub>4</sub>
D	7	R	3 <sup>3</sup> / <sub>4</sub>
DC max	9 <sup>1</sup> / <sub>2</sub>	Suction	4" ANSI
DD	8 <sup>1</sup> / <sub>8</sub>	W	5
Discharge	3" ANSI	X	9
Drain	0.375 NPT	Y	3
E	5 <sup>1</sup> / <sub>2</sub>	Z	7 <sup>1</sup> / <sub>2</sub>
F	4 <sup>3</sup> / <sub>4</sub>		
G	1/4		

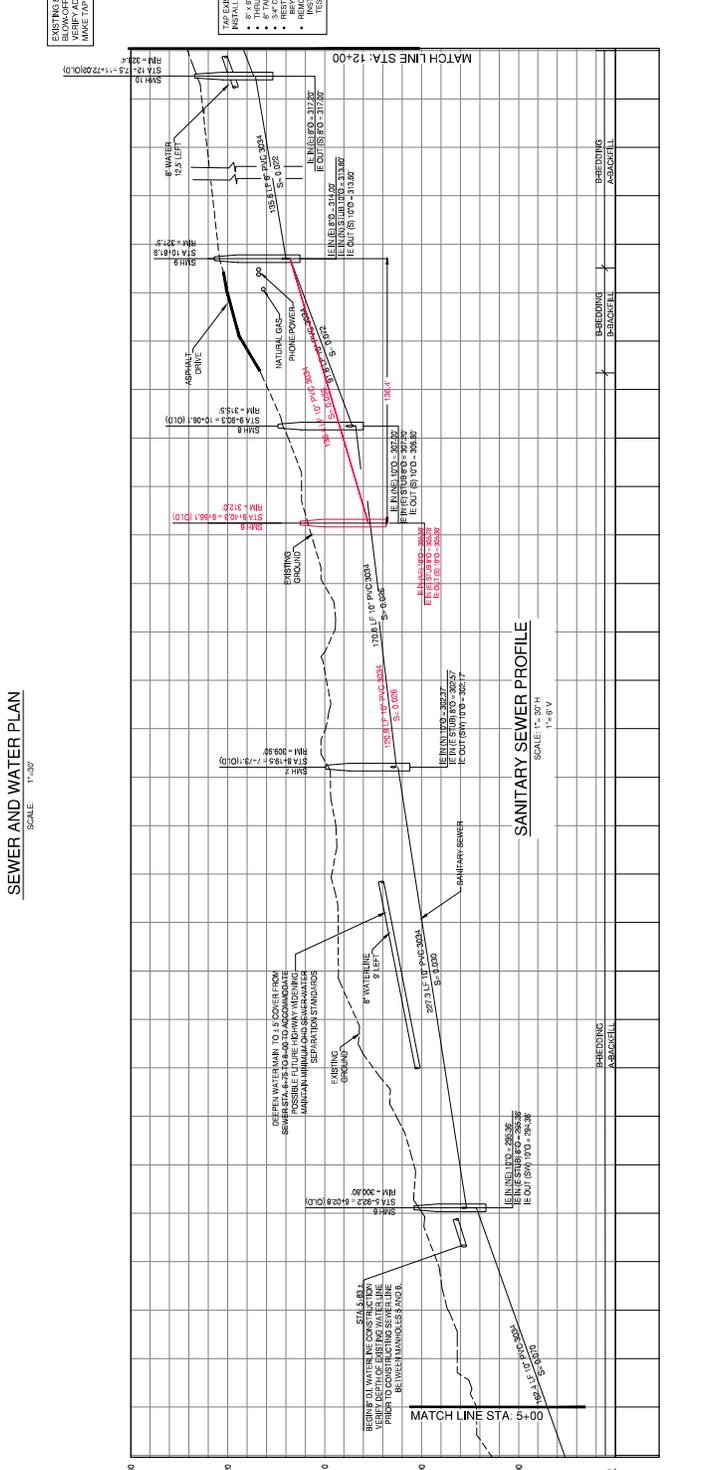
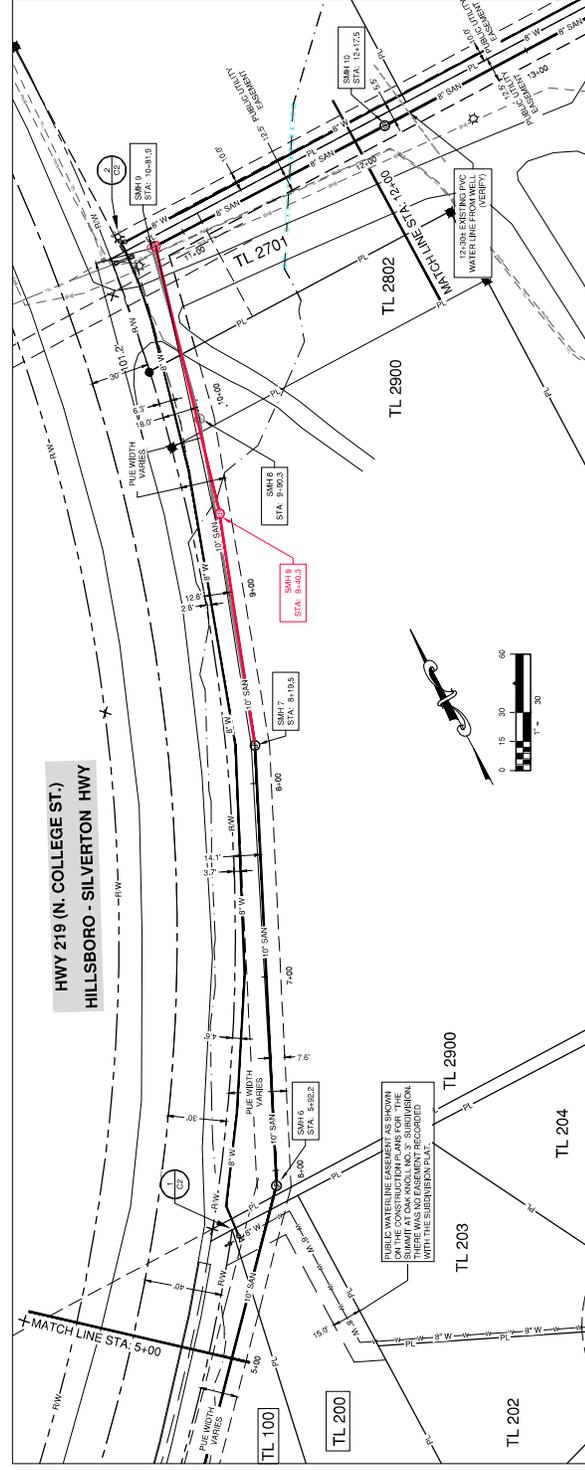
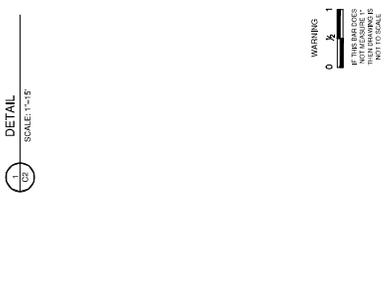
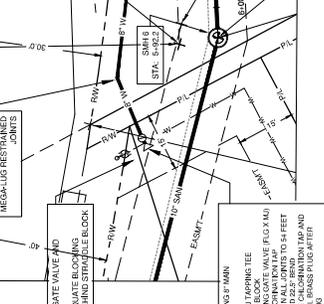
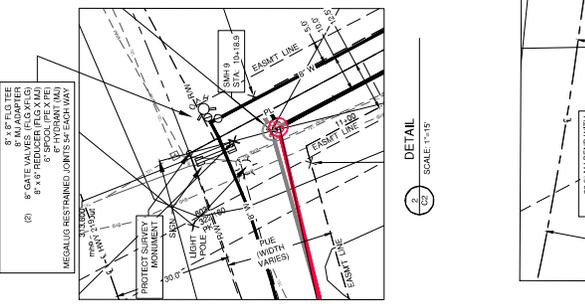


Larry Anderson Engineering, Inc.  
1215 Knaprock Lane, Newberg, Oregon 97132  
P: (503) 537-4115 E: andersonl@laeng.com

NO.	DATE	REVISION	BY
1	02/25/13	UTILITY PLAN	LJA
2	07/31/13	PER CITY COMMENTS	LJA

PROJECT	DATE	SHEET
VERITAS SCHOOL	05/16/15	C2

DWG: CHLOR SEWER WATER PIP PLAN 13.2013



WARNINGS

IF THIS DRAWING DOES NOT SHOW THE EXISTING UTILITIES, THE CONTRACTOR SHALL VERIFY THE EXISTING UTILITIES.

IF THE EXISTING UTILITIES ARE NOT SHOWN, THE CONTRACTOR SHALL VERIFY THE EXISTING UTILITIES.

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## MEMORANDUM

**DATE:** December 9, 2015

**TO:** Kaaren Hofmann, PE – City Engineer

**FROM:** John P. Christiansen, PE – AKS Engineering & Forestry, LLC

**CC:** Bill Rourke – Owner

**SUBJECT:** Oak Knoll Booster Pump Upgrade – Preliminary Engineer’s Cost Estimate

**PROJECT:** 4016 N College Street (AKS #4612)

### BACKGROUND

The owner of the property located at 4016 N College Street is pursuing the development of a single-family residential subdivision on the subject property (TL 2900 Map 3.2.08). As summarized in the *Oak Knoll Booster Pump Upgrade – Revised* memorandum prepared by AKS Engineering & Forestry, LLC (AKS) dated November 16, 2015, upgrades to an existing water booster pump are required to support the proposed development. This memorandum is being provided at the request of the City of Newberg (City) to identify anticipated costs associated with the booster pump upgrades.

### PRELIMINARY COST ESTIMATE

The following table provides a preliminary cost estimate for upgrades to the Oak Knoll Booster Pump Station. In general, upgrades are anticipated to include removal of two (2) existing pumps and replacement with two (2) Goulds Close-Coupled End-Suction pumps coupled with 30 HP motors.

#	Cost Description	Quantity	Unit	Unit Price	Total
1	Soft costs incurred to date	1	LS	\$3,000	\$3,000
2	Pump station upgrades	1	LS	\$50,428	\$50,428
3	Final design	1	LS	\$5,000	\$5,000
4	Contingency	1	LS	\$10,000	\$10,000
	<b>Total</b>				<b>\$68,428</b>

#### Notes:

1. Soft costs incurred to date are for services provided by AKS to prepare system demand calculations for the future development and evaluate pump upgrades.
2. Pump Station Upgrades per Quotation #TP15302-1 by Triangle Pump dated 10/29/2015.
3. Final design includes civil engineering services for plan preparation to obtain plan approval from the City.
4. Contingency is included, given the preliminary nature of this estimate.
5. This cost estimate is provided for budgetary purposes only. Actual construction costs may vary.

### COST ALLOCATION

The proposed booster pump upgrades have been planned to meet the system demands of development on properties under the ownership of three parties: Bill Rourke, North Valley Friends Church, and the

Veritas School. The following table provides a cost sharing structure between these parties based on a proportionate share of increased demand on the system:

Proportionate Share Based on Water System Demand				
Water System User	Water System Demand (gpm)*	Total Water System Demand (gpm)	Proportionate Usage (%)	Proportionate Cost
Rourke Property	70	171	41	\$28,055
North Valley Friends Church	41	171	24	\$16,423
Veritas School	60	171	35	\$23,950

\*Note: Water System Demand per November 16, 2015 memorandum by AKS.

**CONCLUSION**

We understand the City will facilitate a meeting between the affected properties to discuss the necessity of the booster upgrades, as well as a path for cost sharing.

**Attachments**

Quotation #TP15302-1 from Triangle Pump



RENEWAL DATE: 12/31/17

 <p><b>Triangle Pump &amp; Equipment, Inc.</b> PO Box 2890 {Battle Ground, WA 98604} Phone 360-887-9530 Fax 360-887-9540 sales@trianglepump.com</p>	<p><b>Quotation</b></p> <p><b>QUOTATION #TP15302-1</b></p>	
	<p><b>Date:</b> 10/29/2015</p>	<p><b>Bid Time:</b> N/A</p>

<p><b>TO:</b> AKS ENGINEERING &amp; FORESTRY LLC Jeff Nelson</p>	<p><b>Owner:</b> City of Newberg</p> <p><b>Consulting Firm:</b> AKS</p>
--	---

SALESPERSON	PROPOSAL EXPIRATION DATE	PAYMENT TERMS	ADDENDA
Ray F. Cook	11//28/2015	Net 30-Days After Receipt Of Equipment {Unless Otherwise Negotiated}	N/A

Upon the terms and conditions on both sides of this form and accompanying materials, Triangle Pump and Equipment, Inc., is pleased to offer the following Quotation for your review. ([www.trianglepump.com](http://www.trianglepump.com)).

DESCRIPTION	SALES PRICE TOTAL
-------------	-------------------

**Upgrade** the existing PRESSURITE 300 Series Booster Station built by Triangle Pump and Equipment for AMT Resources in 2000. The upgrade will consist of the following items/services:

- New Goulds Close-Coupled End-Suction pumps rated for 425 GPM @ 150 Feet TDH, pumps will be coupled to 30 HP Premium Efficiency Inverter rated TEFC motors. Pumps are Cast-Iron Bronze Fitted construction, and are NSF61 labeled.
- Modify the existing control panel with new 30 HP Variable Frequency Drives and short-circuit protective devices. Drives and new short-circuit protective equipment will be mounted in a separate enclosure that will be mounted beside the existing panel. The existing drives will be abandoned, but left in place. Inter-connecting wiring will be completed one pump at a time to keep the system online.
- Modify the existing skid to accommodate the larger motors.
- Modify the existing suction & discharge headers for the new pumps. No new valving or new piping other than what is required to install the new pumps. The piping modifications will be accomplished using Metraflex<sup>®</sup> flexible pump connectors.
- No maintenance or repairs to the existing equipment unless by change-order.
- Longer & larger conductors/conduit from the new VFDs to the motors.
- No upgrade of the Control, Logic, or SCADA systems is included.

**NOTE: The larger pumps in this upgrade will require upgrading the Utility Breaker and the Transfer Switch at the Generator – these ARE NOT included in this quote. Generator will be too small with this upgrade for all three pumps to operate simultaneously.**

**Budgetary Sales Price: \$ 50,428.00**

**Submittals 2 to 4 weeks** after receipt of acceptable purchase order.

**Shipment 10 to 12 weeks** after drawing approval and release to production. Manufacture lead-time is estimated and is subject to availability of materials.

**Comments & Clarifications – General**

1. Delivery terms are F.O.B. jobsite. Freight charges are included.
2. Any changes required by the engineer or the owner will require us to re-quote the entire project.
3. No other equipment or services not specifically mentioned are being provided.
4. Progress Payments are required. See Below:  
**Standard Triangle Terms Orders >=\$50,000.00**  
 35% Due 30-Days after Submittal Approval and Release to Production.  
 60% Due 30-Days after receipt of Equipment.  
 5% Retainage – Not to exceed 60-days after approved startup.

**Comments to Specification Section**

**Adder(s):**

One (1) **Triangle Pump & Equipment, Inc. - Startup Sales Price: \$ 950.00/Day**

Our Field Service {Startup} includes the services of a factory authorized field service technician for checkout, initial start-up, testing, commissioning, and/or instruction of plant personnel as noted in the specification. Refer to our Terms of Field Service below for additional Field Service Detail.

• A Flowmeter can be supplied by Triangle for Startup and Field Testing if requested for an additional \$250.00 added to this Startup Price. One time charge.

• At Startup a Vibration Check can be performed by Triangle Pump using our Ludeca VIBXPERT II to check for compliance to HI Standards only.

A complete Vibrational Analysis can be performed, if required, for additional cost. To be quoted if required.

**Price Quoted is per Day.**

**Price: \$ 950.00**

**Please Remit Purchase Orders To:  
 Triangle Pump & Equipment, Inc.  
 P.O. Box 2890  
 Battle Ground, WA 98604**

**COMMERCIAL TERMS**

Triangle Pump & Equipment, Inc. standard terms and conditions apply as included.

**Submittals:** (4-6) Weeks after receipt of acceptable Purchase Order.

**Validity:** This quotation/proposal is valid for acceptance within (30) days of bid date. Purchase Orders issued beyond this time frame may be subject to price/delivery review. Please notify us prior to placing order, if beyond this time frame, to determine a price increase, if any.

**Delivery:** Quoted after receipt of Submittal Approval and Release to production. Estimated Leadtime TBD at time of order entry.

**Payment:** 100% Net 30-Days after receipt of equipment.  
 100% Net 30-Days for Startup & Training Invoices after completion of Startup.

Invoices are dated as of the date of equipment receipt. If completion of manufacture is delayed at Purchaser’s request, Seller may invoice according to percentage of completion. These terms are independent of and are not contingent upon the manner in which the purchaser may receive payment from others. Storage of equipment shall be at Purchaser’s risk and expense. We reserve the right to make partial shipments of equipment and pro rata invoice for the equipment shipments made. Retention of a Percentage of the contract sale amount is prohibited unless agreed upon in writing prior

to acceptance of this contract. The sale of the equipment described above is made solely and expressly subject to the terms and conditions on the face and reverse side hereof.

**Freight:** Included in quoted price.

**Sales Tax:** Unless otherwise stated in this Quotation, prices do not include any Federal, State, or Local sales, use or other taxes that may be applicable to the sales of offered products or services. The amount of any such applicable taxes will be added to the Invoice at the rate in effect at the time of shipment.

**SUBMITTAL & IOM COMMENTS**

1. (4) Hard Copies of Submittal Data will be provided per this quoted price as well as one (1) electronic copy. Additional Hard Copies can be supplied at the rate of \$30.00 per copy.

2. (2) Hard Copies of Preliminary O&M Manuals will be provided per this quoted price plus one (1) electronic copy. Final copies will not be provided until we have full Preliminary Approval. (3) Hard Copies of final Approved O&M Data will be provided per the quoted price plus one (1) electronic copy. Additional copies specified and/or required will be \$50.00 each.

**Terms of Field Service:** Field Service quoted is not supervisory but advisory only and is offered subject to the express agreement that our function and responsibilities are limited to inspection, interpretation of drawings and IOM Manuals, and identification of materials for proper assembly and operation.

In order to ensure the availability of Servicemen, a minimum of (3) three weeks advance notice will be required to schedule service requests. In most cases, this will enable us to schedule service when requested by the Purchaser. If less than (3) three weeks notice is given, we cannot guarantee availability when requested, and it also may result in premium charges to Purchaser's Account.

In the event we arrive when requested, and the jobsite is not ready for the Service, we will Invoice according to the Rate quoted above. There will be no credit for time spent on site when no service is completed. The quoted rate is for a normal site work schedule defined as, (8) eight hours per day, (5) five days per week; all overtime and Saturday work to be invoiced at one and one half the quoted rate; Sunday and legal Holiday work to be invoiced at double the quoted rate.

Sincerely,

*Ray F. Cook*

Ph: 541-433-2625

Fax: 541-433-2635

Cell: 541-654-7843

Email: [ray@trianglepump.com](mailto:ray@trianglepump.com)

/rfc

*Quotation prepared by: Ray F. Cook*

*This is a quotation on the goods named, subject to the conditions noted above.*

*Unless specifically mentioned in this proposal for inclusion with proposed equipment, Triangle Pump & Equipment, Inc., and the other Manufacturers directly quoting equipment sections included in this Quotation have not included any other items or services.*

*Only those items which are specifically itemized in the descriptions above are included. No other materials or services are included whether they appear in the referenced specification section or sections referenced in that section or on the plans.*

*Disclaimer: Triangle Pump and the Companies we represent base our pump selections solely from the flow and head calculations given to us or stated in the specifications. We will not be held responsible for pump performance due to incorrect system calculations or improper piping configurations.*

To accept this quotation, sign here and return: \_\_\_\_\_

THANK YOU FOR YOUR BUSINESS!

December 2, 2015

Doug Rux  
City of Newberg  
Community Development Director  
414 East First Street  
Newberg, OR 97132

Re: ANX-14-002 4016 N. College St., Newberg, OR 97132

Dear Mr. Rux:

Thanks for asking me to provide this Transportation Planning Rule analysis for the planned annexation of tax lot 3208-2900. This 2.29 acre site is on the east side of College St. (Highway 210) immediately north of, and adjacent to the current city limits (R2/SP) and is in the Urban Growth Boundary. It is zoned VLDR-1 in Yamhill County and is designated Low Density Residential on the City of Newberg Comprehensive Plan. This designation will not be changed when the property is annexed.

The 11 homes planned to be constructed on this site and the one home currently on the property will generate traffic volumes consistent with the Comprehensive Plan and the anticipated zoning of the area when it is annexed.

Bill Rourke

December 15, 2015

Jessica Pelz  
Associate Planner  
City of Newberg  
414 East First Street  
Newberg, OR 97132

Re: ANX-14-002 4016 N. College St., Newberg, OR 97132  
ADDITIONAL COMMENT RE: PUBLIC FACILITIES FINANCIN

Please add the following statement to the above annexation application to supplement the statement provided earlier which states: "The development will pay System Development charges that contribute to parks and school facilities. Taxes from the development will help to provide police, fire and other required services."

Residential streets with sidewalks and public water, sanitary sewer and storm drainage systems consistent with the City of Newberg Public Works Standards will be constructed by the developer at the developer's expense after annexation and tentative plan approval.

Bill Rourke

3 2 08  
NEWBERG

SECTION 8 T35 R2W W.M.  
YAMHILL COUNTY  
1" = 400'

CANCELLED

- 201
- 100
- 3000
- 3001
- 3300
- 3400
- 3502
- 3503
- 3504
- 3600
- 3601
- 3700
- 3800
- 3900
- 4000
- 4101
- 4200
- 4300
- 4400
- 4500
- 4600
- 4700
- 4800

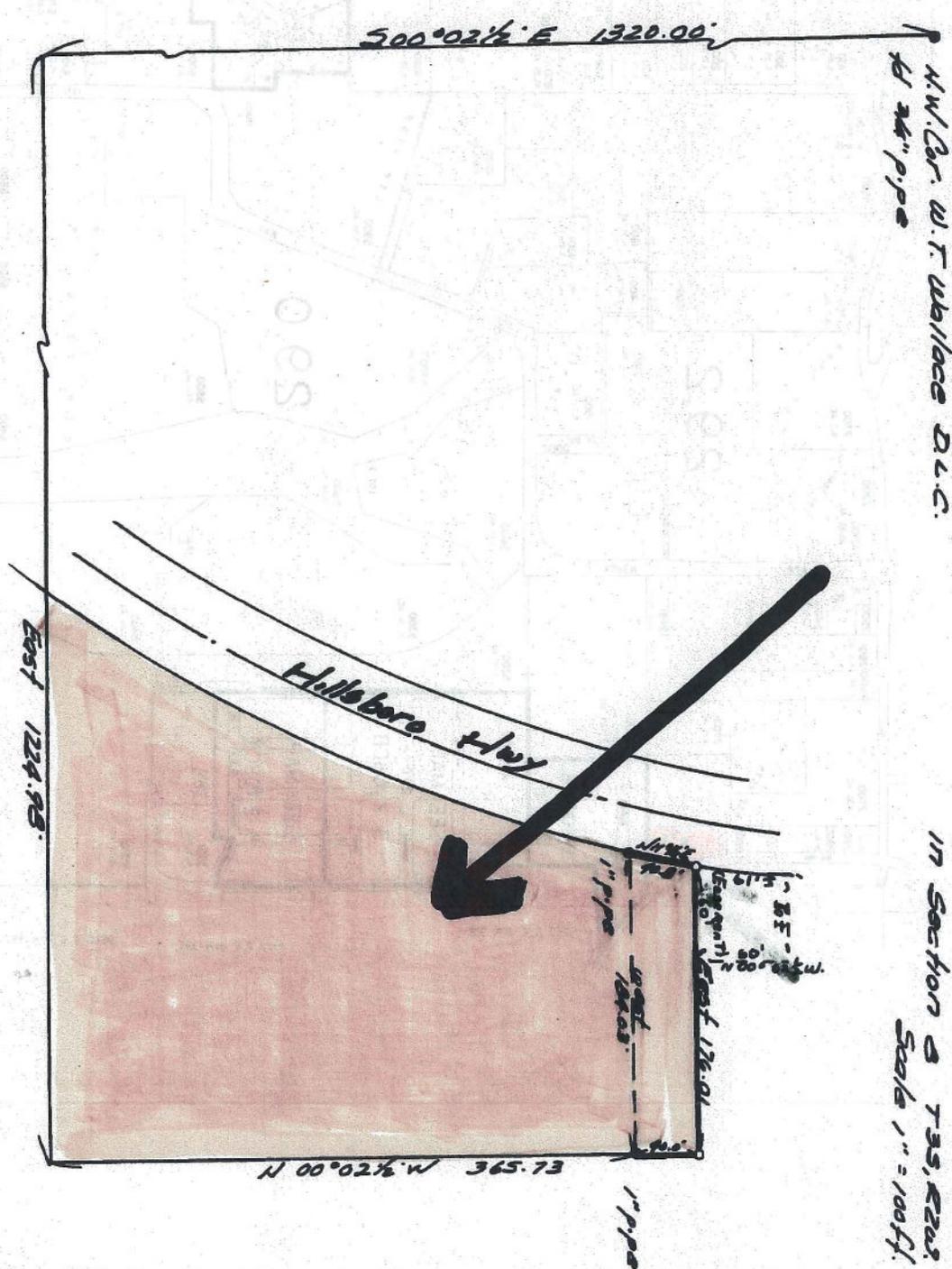


THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

REVISED 5/16/12 SB

3 2 08

1-1



N.W. Cor. W.T. Wallace D.L.C.  
4" 24" pipe

IN SECTION 8 T35, R20S, W1N. NW1.  
Scale 1" = 100ft.

C. S. P-4579  
STALEY REALTY

o denotes 56'x30' R.R. set  
o denotes mans on record

AMERICAN ENGINEERING, INC.  
1506 DeSoto Road  
North, Oregon 97132

*[Handwritten signature]*  
APR 11 2016  
10:00 AM

### ANNEXATION CONSENT

TO THE HONORABLE MAYOR AND COUNCIL OF THE CITY OF NEWBERG, OREGON:

The undersigned J. William Rourke Jr and Myrlene Rourke  
J. Rourke

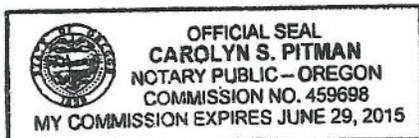
being the sole owner of the real premises described in Exhibit A attached hereto and incorporated by reference herein, and generally known as (address) 4016 N COLLEGE ST and (tax lot) 3208-2900, 2802 does hereby consent to the annexation of such territory above described to the City of Newberg, Oregon.

The undersigned does hereby respectfully petition that the real premises described in Exhibit A be annexed to the City of Newberg, Oregon, in the manner provided by the laws of the State of Oregon and the Charter and Ordinances of the City of Newberg, Oregon.

This consent is binding upon the heirs, successors, and assigns of the above listed property.

In construing this consent, the singular includes the plural as circumstances may require.

IN WITNESS WHEREOF, Petitioner has caused these presents to be executed this 19<sup>th</sup> day of SEPTEMBER, 2014.



J. William Rourke Jr  
J. William Rourke Jr  
Myrlene Rourke  
Myrlene J. Rourke

STATE OF Oregon, County of Yamhill ss September 19, 2014  
Month | day | year

Personally appeared the above named J. William Rourke Jr and Myrlene Rourke

and acknowledged the foregoing instrument to be a voluntary act and deed.

Before me: Carolyn S. Pitman  
Notary Public for Yamhill County  
My commission expires June 29, 2015

**AFTER RECORDING RETURN TO:**

City of Newberg  
 Planning and Building Department  
 PO Box 970 – (414 E. First Street)  
 Newberg, OR 97132

**COVENANT OF WAIVER OF RIGHTS AND REMEDIES****Recitals**

- 1) The undersigned, William Rourke and Mylene J Rourke (hereinafter referred to as "Owner" or "Owners") has/have petitioned the City of Newberg (hereinafter referred to as "City") to commence certain proceedings, relating to 4016 N Collette St Newberg for the real property described in **Exhibit A** which is attached hereto and incorporated herein.
- 2) Pursuant to the enactment of **Ballot Measure 49** (adopted November 6, 2007), if a public entity enacts one or more land use regulations that restrict the residential use of private real property or a farming or forest practice and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations as provided in Measure 49.
- 3) There is the potential that the Oregon electors or the Oregon Legislature may, in the future, enact further statutory or constitutional amendments relating to compensation for the impact of local regulations upon real property, under certain circumstances.
- 4) City does not wish to approve the Owner's/Owners' requested proceedings if the result would or could arguably give rise to a later claim by the Owner or Owners, or the Owner's/Owners' successors or assigns for compensation for the land use regulations in effect upon the effective date of the proceedings, or would or could arguably require the City to waive the City's land use regulations in effect upon the effective date of the proceedings, which are being newly imposed upon the property by reason and result of the proceedings.
- 5) Owner(s) seek(s) to induce the City to proceed with the proceedings and therefore Owner(s) agree(s) to eliminate the potential of claim for compensation or the right to seek waiver from the City's land use regulations existing as of the effective date of the proceedings.

**NOW THEREFORE**, the undersigned Owner(s) warrant(s) that the Owner(s) executing this covenant hold(s) the full and complete present ownership or any interest therein in the property, and hereby agree(s) and covenant(s) as follows:

- 1) As inducement to the City to proceed with the following proceeding(s) affecting the subject real property: 4016 N Collette St, which may include designation of the property as subject to additional applicable overlay zones and districts, e.g., Limited Use Overlay District, (all inclusively referred to herein as "proceedings"), the undersigned Owner(s), on behalf of Owner(s), Owner's/Owners' heirs, devisees, executors, administrators, successors and assigns, agree(s) and covenant(s) to the City of Newberg, its officers, agents, employees and assigns that the undersigned hereby remises, waives, releases and forever discharges, and agrees that Owner(s) shall be estopped from asserting any rights and remedies, actions, causes of action, suits, claims, liabilities, demands, and rights to waivers arising under or granted by any statutory or constitutional regulatory compensation or waiver provisions, including but not limited to Ballot Measure 49 (2007) or otherwise enacted after the date of this proceeding which would create a right of claim for compensation or waiver from City land use regulations that exist upon the effective date of the proceeding and which, by the approval of the proceeding, are then applicable to the property.
- 2) This waiver and release shall bind the undersigned's heirs, devisees, executors and administrators, successors in interests, and assigns. This covenant, waiver, release and discharge shall run with the land, and this instrument, or a memorandum hereof, may be recorded in the official records of the County in which the subject real property is located. This instrument may be terminated upon the filing of a Notice of Termination of Covenant filed by the City of Newberg.

- 3) If this instrument is given contemporaneous with a consent to future proceedings to be initiated by the City, Owner(s) acknowledge(s) that the proceedings may be initiated by the City of Newberg at any time in the discretion of the City of Newberg, and that this waiver and release is applicable to any ordinances adopted prior to the effective date of the proceeding.
- 4) This document is executed of my/our own free will and without duress. I, or if more than one, each of us respectively acknowledge that I/we have been advised to obtain legal advice prior to the execution of this document, and that either I, or each of us respectively, have either obtained legal advice or have independently elected not to seek legal advice prior to the execution of this document, recognizing that this document may affect my/our legal rights and remedies.

OWNER

OWNER

*J William Rowke Jr*

*Myrlene Rowke*

STATE OF OREGON )

County of Yamhill )

ss.



OFFICIAL SEAL  
CAROLYN S. PITMAN  
NOTARY PUBLIC - OREGON  
COMMISSION NO. 459698  
MY COMMISSION EXPIRES JUNE 29, 2015

This instrument was acknowledged before me on this 19<sup>th</sup> day of September, 2014, by J William Rowke Jr and Myrlene Rowke.

*Carolyn S. Pitman*

Notary Public for Oregon

My Commission expires: June 29, 2015

CITY OF NEWBERG

APPROVED AS TO FORM:

Norma I. Alley, City Recorder

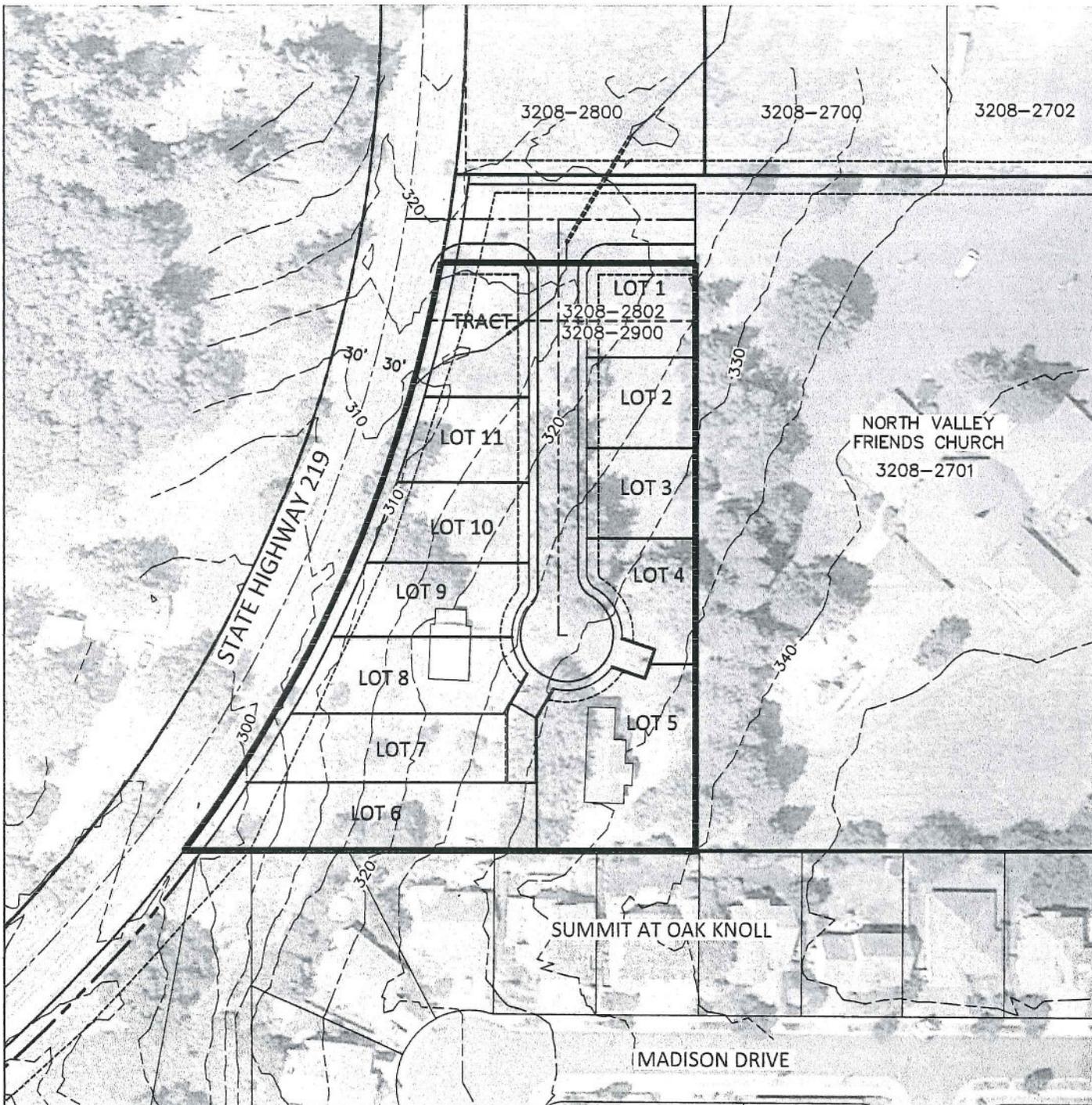
Terrence D. Mahr, City Attorney

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

COVENANT OF WAIVER OF RIGHTS AND REMEDIES

Memphis, TN 38103  
PO Box 810 - (4th E. Floor) 3rd  
Planning and Building Department  
City of Memphis



### GENERAL LAND USE PLAN

1" = 100'



### ROURKE ANNEXATION

TAX LOTS 3208-2900, 2802  
CITY OF NEWBERG, YAMHILL COUNTY, OREGON

OWNERS: J William Rourke, Jr. and Myrlene J. Rourke  
1201 Fulton St., Apt. 13, Newberg, Or 97132

SITE ADDRESS: 4016 N. College St., Newberg

30 September 2014

### LAEI

112 N. Springbrook Road  
Newberg, Oregon 97132  
Phone: (503) 537-1110  
Email: [andeng1@comcast.net](mailto:andeng1@comcast.net)

JOB # 0380



*First American*

**First American Title Company of Oregon**  
825 NE Evans Street  
McMinnville, OR 97128  
Phn - (503)376-7363  
Fax - (866)800-7294

**YAMHILL COUNTY TITLE UNIT**  
FAX (866)800-7294

Title Officer: **Clayton Carter**  
(503)376-7363  
ctcarter@firstam.com

**LOT BOOK SERVICE**

Bill Rourke  
1201 Fulton Street, Suite 13  
Newberg, OR 97132

Order No.: 1039-2322178  
September 22, 2014

Phone No.: (503)538-5567

Fee: \$85.00

We have searched our Tract Indices as to the following described property:

The land referred to in this report is described in Exhibit A attached hereto.

and as of September 19, 2014 at 8:00 a.m.

We find that the last deed of record runs to

J. William Rourke, Jr and Myrlene J. Rourke, as tenants by the entirety

We find the following apparent encumbrances within ten (10) years prior to the effective date hereof:

1. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
2. Easement, including terms and provisions contained therein:
 

Recording Information:	September 24, 2013 as Instrument No. 201315147
In Favor of:	The City of Newberg, a municipal corporation
For:	Public Sanitary Sewer and Public Waterline.
3. Deed of Trust and the terms and conditions thereof.
 

Grantor/Trustor:	J William Rourke Jr and Myrlene J Rourke
Grantee/Beneficiary:	Rivermark Community Credit Union
Trustee:	First American Equity Loan Services
Amount:	\$75,000.00
Recorded:	February 07, 2012
Recording Information:	Instrument No. 201201422, Deed and Mortgage Records

We have also searched our General Index for Judgments and State and Federal Liens against the Grantee(s) named above and find:

NONE

We find the following unpaid taxes and city liens:

1. Taxes for the fiscal year 2014-2015 a lien due, but not yet payable.

NOTE: Taxes for the year 2013-2014 PAID IN FULL

Tax Amount:	\$3,804.95
Map No.:	R3208 02900
Property ID:	25859
Tax Code No.:	29.2

Situs Address as disclosed on Yamhill County Tax Roll:

4016 N College Street, Newberg, OR 97132

THIS IS NOT a title report since no examination has been made of the title to the above described property. Our search for apparent encumbrances was limited to our Tract Indices, and therefore above listings do not include additional matters which might have been disclosed by an examination of the record title. We assume no liability in connection with this Lot Book Service and will not be responsible for errors or omissions therein. The charge for this service will not include supplemental reports, rechecks or other services.

**Exhibit "A"**

Real property in the County of Yamhill, State of Oregon, described as follows:

Beginning at an iron pipe at the East boundary of Hillsboro-Silverton Highway, said point being South  $00^{\circ}02\frac{1}{2}'$  East 1320.0 feet and East parallel to the North boundary of Section 8, a distance of 869.85 feet from the Northwest corner of William T. Wallace Donation Land Claim, Township 3 South, Range 2 West of the Willamette Meridian, Yamhill County, Oregon; thence East parallel to the North boundary of Section 8, a distance of 355.13 feet to an iron pipe; thence North  $00^{\circ}02\frac{1}{2}'$  West parallel to the West boundary of Donation Land Claim, 405.73 feet; thence West parallel with South boundary, distance of 178 feet, more or less, to the East boundary of State Highway; thence Southwesterly along State Highway, a distance of 447 feet, more or less, to the place of beginning.

ALSO a non-exclusive easement for roadway purposes over a strip of land described as follows:

Beginning at the most Northwest corner of the above described tract; thence East 60 feet; thence North  $00^{\circ}02\frac{1}{2}'$  West 60 feet; thence West 50 feet, more or less, to the Easterly boundary of Hillsboro-Silverton Highway; thence Southwesterly along the Easterly boundary of said Highway, 60 feet, more or less, to the place of beginning.



## **ORDINANCE No. 2016-2799**

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**AN ORDINANCE ANNEXING PROPERTY LOCATED AT 4016 N COLLEGE STREET, YAMHILL COUNTY TAX LOT 3208-02900, INTO THE NEWBERG CITY LIMITS AND WITHDRAWING IT FROM THE NEWBERG RURAL FIRE PROTECTION DISTRICT, AND CHANGING THE CURRENT ZONING FROM YAMHILL COUNTY VLDR-1 TO CITY R-1**

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### **RECITALS:**

1. J. William Rourke, Jr. & Myrlene J. Rourke submitted an application to annex 2.29 acres into the City of Newberg and change the zoning from Yamhill County VLDR-1 to Newberg R-1. The property is located directly north of the current Newberg city limits on the east side of College Street/Highway 219, 4016 N. College Street, Tax Lot 3208-02900.
2. The property is located within the Newberg urban growth boundary and is adjacent to the Newberg city limits. The Comprehensive Plan designation of the property is LDR (Low Density Residential), which is consistent with the proposed zoning of R-1 (Low Density Residential). Adequate public services and utilities are or can be made available to serve the property within three years.
3. After proper notice, the Newberg Planning Commission held a hearing on March 10, 2016, to consider the application. The Commission considered testimony, deliberated, and voted to approve Planning Commission Resolution No. 2016-316 recommending that the City Council approve the annexation request and concurrent zone change.
4. State law recently changed with the passage and adoption of Oregon Senate Bill 1573, which added language to ORS 222.111 that preempts Newberg's requirement that annexations go to a public vote, and instead directs the legislative body of a city to annex property without a public vote when the property meets certain requirements, including: being within the urban growth boundary; subject to the Comprehensive Plan of the city; contiguous to city limits; and meeting the city's adopted Development Code criteria for annexation. This property meets those criteria.
5. After proper notice, the Newberg City Council held a hearing on April 4, 2016 to consider the proposed annexation and concurrent zone change. After the staff report and public testimony, the City Council finds the proposal has met the required criteria.

### **THE CITY OF NEWBERG ORDERS AS FOLLOWS:**

1. The property shown in Exhibit "A" and described in Exhibit "B" is hereby annexed into the City of Newberg and withdrawn from the Newberg Rural Fire Protection District, and the zoning of the property is changed from Yamhill County VLDR-1 to Newberg R-1. Exhibits "A" and "B" are hereby adopted and by this reference incorporated.
2. The applicant shall revise the legal description of the property to be annexed to include area to the centerline of the adjacent College Street/Highway 219 right-of-way to provide for continuity of the city limits to the west.

3. This recommendation is based on the findings shown in Exhibit "C". Exhibit "C" is hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: May 4, 2016.

**ADOPTED** by the City Council of Newberg, Oregon, this 4<sup>th</sup> day of April, 2016.

---

Sue Ryan, City Recorder

**ATTEST** by the Mayor this 7<sup>th</sup> day of April, 2016.

---

Bob Andrews, Mayor



**Exhibit “B” to City Council Ordinance No. 2016-2799  
Legal Description – Rourke Annexation**

Real property in the County of Yamhill, State of Oregon, described as follows:

Beginning at an iron pipe at the East boundary of Hillsboro-Silverton Highway, said point being South 00°02½' East 1320.0 feet and East parallel to the North boundary of Section 8, a distance of 869.85 feet from the Northwest corner of William T. Wallace Donation Land Claim, Township 3 South, Range 2 West of the Willamette Meridian, Yamhill County, Oregon; thence East parallel to the North boundary of Section 8, a distance of 355.13 feet to an iron pipe; thence North 00°02½' West parallel to the West boundary of Donation Land Claim, 405.73 feet; thence West parallel with South boundary, distance of 178 feet, more or less, to the East boundary of State Highway; thence Southwesterly along State Highway, a distance of 447 feet, more or less, to the place of beginning.

ALSO a non-exclusive easement for roadway purposes over a strip of land described as follows:

Beginning at the most Northwest corner of the above described tract; thence East 60 feet; thence North 00°02½' West 60 feet; thence West 50 feet, more or less, to the Easterly boundary of Hillsboro-Silverton Highway; thence Southwesterly along the Easterly boundary of said Highway, 60 feet, more or less, to the place of beginning.

**Exhibit “C” to City Council Ordinance No. 2016-2799  
Findings –File ANX-14-002 – Rourke Annexation**

**A. 15.250.020 Conditions for annexation.**

*The following conditions must be met prior to or concurrent with city processing of any annexation request:*

*A. The subject site must be located within the Newberg urban growth boundary or Newberg urban reserve areas.*

*B. The subject site must be contiguous to the existing city limits.*

**Finding:** The Rourke property located at 4016 N College Street, Tax Lot 3208-2900, is located within the urban growth boundary and is contiguous to the Newberg city limits along its southern boundary. The Planning Commission has placed a condition in Resolution No. 2016-316 that the applicant shall revise the legal description of the property to be annexed to include area to the centerline of the adjacent College Street/Highway 219 right-of-way to provide for continuity of the city limits to the west. This criterion is met.

**B. 15.250.030 Quasi-judicial annexation criteria.**

*The following criteria shall apply to all annexation requests:*

*A. The proposed use for the site complies with the Newberg comprehensive plan and with the designation on the Newberg comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Newberg comprehensive plan.*

**Finding:** The applicant is requesting a city zone of R-1 (Low Density Residential), which is consistent with the current comprehensive plan map designation of LDR (Low Density Residential).

*B. An adequate level of urban services must be available, or made available, within three years’ time of annexation, except as noted in subsection (E) of this section. An adequate level of urban services shall be defined as:*

*1. Municipal wastewater and water service meeting the requirements enumerated in the Newberg comprehensive plan for provision of these services.*

*2. Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three-year time period, the city shall note requirements such as dedication of right-of-way, waiver of remonstrance against assessment for road improvement costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. The city shall also*

*consider public costs for improvement and the ability of the city to provide for those costs.*

**Finding:** City water and sewer lines were previously extended across this property to the North Valley Friends and Veritas properties in 2014 in accordance with a Development Agreement the city had executed with North Valley Friends in 2010. There are no issues with the new sewer line; however, the newly extended water line connects to the Oak Knoll booster pump station, which was constructed in 2000 to augment low system pressure for the 40-lot Summit at Oak Knoll subdivision [2004 City of Newberg Water Distribution System Plan]. Based on the size and purpose of the Oak Knoll booster pump station, the city was concerned about adequate water flows to the Rourke property to serve their future development, as well as development on the adjacent North Valley Friends and Veritas sites. The applicant hired AKS Engineering & Forestry (AKS) to explore the capacity of the Oak Knoll booster pump station and to identify any upgrades necessary to serve the future developments. AKS found that the Oak Knoll booster station would need to be upgraded to supply adequate water to Rourke, North Valley Friends, and Veritas. In addition, AKS identified the specific required improvements and provided a cost estimate for the upgrades. The city concurs with the AKS assessment, and finds that the upgrades can be made to serve the property consistent with the annexation requirements.

The Rourke property is currently accessed from Highway 219/College Street via a “non-exclusive easement for roadway purposes” over a small property owned by North Valley Friends. Future development of the Rourke property will likely necessitate dedication of right-of-way to extend a public street access into the property. Street improvements to the College Street/Highway 219 frontage will be required at the time of development.

*C. Findings documenting the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.*

**Finding:** The city sends the application information out to the Police and Fire Departments, Chehalem Parks and Recreation District (CPRD), and the Newberg School District, among other agencies, for comments prior to the staff report. The Newberg School District and Fire Department both replied with “no comments”, and the Police Department and CPRD did not comment. There is no information to suggest that city services could not support the addition of the 2.29 acres to the city limits, and in fact future development of the site helps fund these city services and other System Development Charge or permit fee funded services such as the School District and CPRD.

*D. The burden for providing the findings for subsections (A), (B) and (C) of this section is placed upon the applicant.*

**Finding:** The applicant submitted adequate information to allow the city to make findings to the applicable criteria.

*E. The city council may annex properties where urban services are not and cannot practically be made available within the three-year time frame noted in subsection (B) of this section, but where annexation is needed to address a health hazard, to annex an island, to address wastewater or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the city council shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available.*

**Finding:** This criterion is not applicable because adequate urban services are found to be available within the three year time frame.

**C. 15.302.030 Procedures for comprehensive plan map and zoning map amendments.**  
*A.3. Amendment Criteria. The owner must demonstrate compliance with the following criteria:*

*a. The proposed change is consistent with and promotes the goals and policies of the Newberg comprehensive plan and this code;*

**Finding:** This current Comprehensive Plan designation of the property is LDR (Low Density Residential). The applicant is asking for a corresponding zoning of R-1 (Low Density Residential). Therefore, the proposed zone change from Yamhill County VLDR-1 to Newberg R-1 is consistent with the Comprehensive Plan, and continues to meet the Comprehensive Plan goals and policies as envisioned when the property was brought into the urban growth boundary with the LDR designation.

*b. Public facilities and services are or can be reasonably made available to support the uses allowed by the proposed change;*

**Finding:** As demonstrated in the finding to 15.250.030.B. above, the applicant has demonstrated that adequate public facilities and services can be reasonably made available to support future development of the property at R-1 permitted densities.

*c. Compliance with the State Transportation Planning Rule (OAR 660-012-0060) for proposals that significantly affect transportation facilities.*

**Finding:** Annexation of the property complies with the State Transportation Planning Rule (TPR) (OAR 660-012-0060) because it meets the requirements for an amendment to a zoning map that does not significantly affect an existing or planned transportation facility as permitted by Subsection (9) of the TPR: the proposed zoning of R-1 is consistent with the existing comprehensive plan map designation of LDR; the City of Newberg has an acknowledged TSP which included this area in the urban reserve as planned future urbanizable land; this property was brought into the urban growth

boundary in 2006 as part of a larger urban growth boundary amendment that included a full report with adequate justifications for transportation and other public facilities.

*OAR 660-012-0060(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.*

*(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;*

*(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and*

*(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.*

*[Subsection (1) of OAR 660-012-0060]*

*(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:*

*(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*

*(b) Change standards implementing a functional classification system; or*

*(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.*

*(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*

*(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or*

*(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

- D. Conclusion:** Based on the above-mentioned findings, the application meets the criteria of the Newberg Development Code.

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: April 4, 2016

Order ___ No.	Ordinance ___ No.	Resolution ___ No.	Motion <u>XX</u>	Information ___
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**SUBJECT: Taxes on medical and recreational marijuana**

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

## RECOMMENDATION:

Staff recommends City Council provide staff direction on the appropriate tax methodology.

## EXECUTIVE SUMMARY:

The Newberg City Council passed Ordinance No. 2014-2777 on October 6, 2014. This ordinance established a new Chapter 3.40 under Title 3 Revenue and Finance of the Newberg Municipal Code. The purpose was to establish a tax on the sale of marijuana, medical marijuana or marijuana-infused products in the city of Newberg. The tax levied is 5% on gross sales for medical marijuana and 10% on gross sales for marijuana or marijuana-infused products (see Attachment 1).

Oregon laws were passed in 2015 on the taxation of recreational marijuana. The applicable bills include HB 3400 and HB 2041. Specific language from the two applicable legislative bills are included in this summary.

At issue is if Newberg Ordinance No. 2014-2777 is grandfathered in before the enactment of any legislative bill regulating the tax on marijuana, or is the city limited to following the provisions in HB 3400. HB 3400 allows a local government to establish a tax of 3% on recreational marijuana sales with passage of an ordinance and a referral to the electors of the city at the next statewide general election. Another question raised during the Marijuana Subcommittee meetings is should the city be taxing medical marijuana?

The policy considerations related to a tax on marijuana are as follows:

1. Retain Ordinance No. 2014-2777 as adopted on October 6, 2014.
2. Pass a new ordinance following the state provision for a 3% tax on recreational marijuana.
3. To continue to tax or not tax medical marijuana.

## Policy Options:

1. Continue forward with Ordinance No. 2014-2777 as adopted.

### Pros

- a. This ordinance was passed by the City Council on October 6, 2014 pre HB 3400.
- b. Establishes a tax on medical marijuana as well as marijuana or marijuana-infused products.

- c. Tax collection on medical marijuana has already occurred in January 2016. The next collection period will occur in April 2016.
- d. Recreational marijuana retail operations have not been licensed by the OLCC and are not in operation at this time.
- e. City Council banned early sales of recreational marijuana from medical dispensaries by Ordinance No.2015-2787.
- f. If the City has not banned one or a combination of the recreational marijuana categories it would still share in the state shared revenue program established in HB 2041. The revenue though can only be used to assist local law enforcement in performing its duties.
- g. The local tax revenue generated can be used for any City identified purpose.

Cons

- a. Ordinance 2014-2777 could be challenged in court as illegal regarding recreational marijuana because of the language in HB 3400 that the authority to impose a tax rests with the Legislative Assembly.
  - b. Alternatively, the City could file an action asking a court to validate the tax imposed by Ordinance No. 2014-2777.
  - c. Recreational retail stores licensed by OLCC who have paid a local tax may have to have the taxes collected refunded if Ordinance 2014-2777 was successfully challenged and found to be contrary to State law.
2. Pass a new ordinance using the State 3% tax methodology and refer the ordinance to the electors at the next statewide general election (Nov 2016).

Pros

- a. Utilizing the State 3% authorization can be viewed as the safe harbor approach.
- b. Repeal the portion of Ordinance No. 2014-2777 related to marijuana or marijuana – infused products while retaining the 5% tax on medical marijuana gross sales.
- c. Retain Ordinance No. 2014-2777 and adopt a new ordinance on a 3% tax and refer both to the voters.
- d. If the City has not banned one or a combination of the recreational marijuana categories it would still share in the state shared revenue program established in HB 2041. The revenue though can only be used to assist local law enforcement in performing its duties.
- e. The local tax revenue generated can be used for any City identified purpose.

Cons

- a. Voters could reject the 3% tax in preference of the 10% tax.
  - b. If the 10% tax was successfully challenged in court and the voters rejected the 3% tax then no local taxes would be collected until after the next statewide general election if the Council placed a ballot title on the election and the voters approved the 3% tax.
  - c. Reduces the potential revenue to the City from 10% down to 3% of gross sales.
  - d. The City may have to refund a portion of the taxes previously collected.
3. Pass a new ordinance that removes the tax on medical marijuana.

Pros

- a. Medical marijuana can be viewed as medication and should not be taxed. This is similar to drug stores providing prescription medications that are not taxed locally.

Cons

- a. Reduces the potential revenue to the City.
- b. The City may have to refund the taxes previously collected.

Provisions of HB 3400 and HB 2041 related to taxes on marijuana are identified below.

HB 3400, Section 34a allows a city to establish a tax or fee for recreational marijuana retailers. A city must adopt an ordinance to impose the tax or fee and it must be referred to electors for a vote at the next statewide general election. The maximum tax of fee amount is 3%. The law reads:

**(Local Option Tax)**

**SECTION 34a. (1)(a) Except as expressly authorized by this section, the authority to impose a tax or fee on the production, processing or sale of marijuana items in this state is vested solely in the Legislative Assembly.**

**(b) Except as expressly authorized by this section, a county, city or other municipal corporation or district may not adopt or enact ordinances imposing a tax or fee on the production, processing or sale of marijuana items in this state.**

**(2) Subject to subsection (4) of this section, the governing body of a city or county may adopt an ordinance to be referred to the electors of the city or county as described in subsection (3) of this section that imposes a tax or a fee on the sale of marijuana items that are sold in the area subject to the jurisdiction of the city or the unincorporated area subject to the jurisdiction of a county by a person that holds a license under section 22, chapter 1, Oregon Laws 2015.**

**(3) If the governing body of a city or county adopts an ordinance under this section, the governing body shall refer the measure of the ordinance to the electors of the city or county for approval at the next statewide general election.**

**(4) An ordinance adopted under this section may not impose a tax or fee in excess of 3 percent.**

HB 3400, Section 70 authorizes the state to tax a recreational marijuana product. The law reads:

**SECTION 70.** Section 33, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 33. (1) A tax is imposed upon the privilege of engaging in business as a marijuana producer at the rate of:**

- (a) \$35 per ounce on all marijuana flowers;
- (b) \$10 per ounce on all marijuana leaves; and
- (c) \$5 per immature marijuana plant.

(2) The rates of tax imposed by this section upon marijuana flowers and marijuana leaves apply proportionately to quantities of less than one ounce.

(3) The tax imposed by this section [*shall*] **must** be measured by the quantities of marijuana flowers, marijuana leaves[,] and immature marijuana plants produced and sold by any marijuana producer. The taxes specified in this section [*shall*] **must** be levied and assessed to the marijuana

producer at the time of the first sale of the marijuana flowers, marijuana leaves[,] and immature marijuana plants by the marijuana producer.

(4) For reporting periods beginning on or after July 1, 2017, the rates of tax under subsection (1) of this section [shall] **must** be adjusted for each biennium according to the cost-of-living adjustment for the calendar year. The Oregon Liquor Control Commission shall recompute the rates for each biennium by adding to each rate in subsection (1) of this section the product obtained by multiplying the rate by a factor that is equal to 0.25 multiplied by the percentage (if any) by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31 of the prior calendar year exceeds the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending August 31, 2015.

(5) The commission shall regularly review the rates of tax under subsection (1) of this section and make recommendations to the Legislative Assembly regarding appropriate adjustments to the rates that will further the purposes of:

- (a) Maximizing net revenue;
- (b) Minimizing the illegal marijuana industry under [Oregon law] **the laws of this state**; and
- (c) Discouraging the use of marijuana by minors under 21 years of age.

HB 3400, Section 71 requires the state privilege tax to be paid to the Oregon Liquor Control Commission. The law reads:

**SECTION 71.** Section 34, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 34.** (1) The privilege tax imposed by section 33, **chapter 1, Oregon Laws 2015**, [of this Act shall] **must** be paid to the Oregon Liquor Control Commission. The taxes covering the periods for which statements are required to be rendered by section 35, **chapter 1, Oregon Laws 2015**, [of this Act shall] **must** be paid before the time for filing such statements expires. If not so paid, a penalty of 10 percent and interest at the rate of one percent a month or fraction of a month [shall] **must** be added and collected. The commission may refund any tax payment imposed upon or paid in error by any licensee.

(2) The commission may waive any interest or penalty assessed to a marijuana producer subject to the tax imposed under section 33, **chapter 1, Oregon Laws 2015**, [of this Act] if the commission, in its discretion, determines that the marijuana producer has made a good faith attempt to comply with the requirements of sections 31 to 44, **chapter 1, Oregon Laws 2015** [of this Act].

(3) Except in the case of fraud, the commission may not assess any interest or penalty on any tax due under section 33, **chapter 1, Oregon Laws 2015**, [of this Act] following the expiration of 36 months from the date on which was filed the statement required under section 35, **chapter 1, Oregon Laws 2015**, [of this Act] reporting the quantities of marijuana flowers, marijuana leaves[,] and immature marijuana plants upon which the tax is due.

(4) A marijuana producer may appeal a tax imposed under section 33, **chapter 1, Oregon Laws 2015**, [of this Act] in the manner of a contested case under ORS chapter 183.

HB 3400, Section 71 requires the state privilege tax to be paid to the Oregon Liquor Control Commission. The law reads:

**SECTION 71.** Section 34, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 34.** (1) The privilege tax imposed by section 33, **chapter 1, Oregon Laws 2015**, [of this Act shall] **must** be paid to the Oregon Liquor Control Commission. The taxes covering the periods for which statements are required to be rendered by section 35, **chapter 1, Oregon Laws 2015**, [of this Act shall] **must** be paid before the time for filing such statements expires. If not so paid, a penalty of 10 percent and interest at the rate of one percent a month or fraction of a month [shall] **must** be added and collected. The commission may refund any tax payment imposed upon or paid in error by any licensee.

(2) The commission may waive any interest or penalty assessed to a marijuana producer subject to the tax imposed under section 33, **chapter 1, Oregon Laws 2015**, [of this Act] if the commission, in its discretion, determines that the marijuana producer has made a good faith attempt to comply with the requirements of sections 31 to 44, **chapter 1, Oregon Laws 2015** [of this Act].

(3) Except in the case of fraud, the commission may not assess any interest or penalty on any tax due under section 33, **chapter 1, Oregon Laws 2015**, [of this Act] following the expiration of 36 months from the date on which was filed the statement required under section 35, **chapter 1, Oregon Laws 2015**, [of this Act] reporting the quantities of marijuana flowers, marijuana leaves[,] and immature marijuana plants upon which the tax is due.

(4) A marijuana producer may appeal a tax imposed under section 33, **chapter 1, Oregon Laws 2015**, [of this Act] in the manner of a contested case under ORS chapter 183.

HB 3400, Section 73 provides that the Oregon Liquor Control Commission to estimate the required tax on a producer if the producer fails, neglects or refuses to file the required statement. The law reads:

**SECTION 73.** Section 36, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 36.** If any marijuana producer fails, neglects or refuses to file a statement required by section 35, **chapter 1, Oregon Laws 2015**, [of this Act] or files a false statement, the Oregon Liquor Control Commission shall estimate the quantities of marijuana flowers, marijuana leaves[,] and immature marijuana plants sold by the marijuana producer and assess the privilege taxes [thereon] **on the estimated quantities**. The marijuana producer [shall] **must** be estopped from complaining of the quantities so estimated.

HB 2041, Section 2 establishes a state tax on the sale of recreational marijuana at 17%. The law reads:

## Taxes

**SECTION 2.** (1) A tax is hereby imposed upon the retail sale of marijuana items in this state. The tax imposed by this section is a direct tax on the consumer, for which payment upon retail sale is required to achieve convenience and facility in the collection and administration of the tax. **The tax shall be collected at the point of sale of a marijuana item**

- by a marijuana retailer at the time at which the retail sale occurs.
- (2) The tax imposed under this section shall be imposed at the rate of:
- (a) 17 percent of the retail sales price of marijuana leaves;
  - (b) 17 percent of the retail sales price of marijuana flowers;
  - (c) 17 percent of the retail sales price of immature marijuana plants;
  - (d) 17 percent of the retail sales price of a cannabinoid edible;
  - (e) 17 percent of the retail sales price of a cannabinoid concentrate;
  - (f) 17 percent of the retail sales price of a cannabinoid extract;
  - (g) 17 percent of the retail sales price of a cannabinoid product that is intended to be used by applying the cannabinoid product to the skin or hair; and
  - (h) 17 percent of the retail sales price of cannabinoid products other than those described in paragraph (g) of this subsection.
- (3) If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal to the next higher whole cent.
- (4) The amount of the tax shall be separately stated on an invoice, receipt or other similar document that the marijuana retailer provides to the consumer, or shall be otherwise disclosed to the consumer.
- (5) A person may not knowingly sell, purchase, install, transfer or possess software programs or other electronic devices intended to hide or to remove records of retail sales of marijuana items or to falsify records of retail sales of marijuana items.

HB 2041, Section 3 establishes that the collection of the tax for a retailer is at the point of sale. The law reads:

- SECTION 3.** (1) Except as otherwise provided in sections 1 to 13 of this 2015 Act, the tax imposed upon the consumer under section 2 of this 2015 Act shall be collected at the point of sale and remitted by each marijuana retailer that engages in the retail sale of marijuana items. The tax is considered a tax upon the marijuana retailer that is required to collect the tax, and the marijuana retailer is considered a taxpayer.
- (2) The marijuana retailer shall submit a return to the Department of Revenue on or before the last day of January, April, July and October of each year for the previous calendar quarter.
- (3) The marijuana retailer shall pay the tax to the department in the form and manner prescribed by the department, but not later than with each quarterly return, without regard to extensions under subsection (5) of this section.
- (4) Marijuana retailers shall file the returns required under this section regardless of whether any tax is owed.
- (5) The department for good cause may extend the time for making any return under this section. The extension may be granted at any time if a written request is filed with the department during or prior to the period for which the extension may be granted. The department may not grant an extension of more than 30 days.
- (6) Interest shall be added at the rate established under ORS 305.220 for each month, or fraction of a month, from the time the return was originally required to be filed to the time of payment.

(7) Except as provided in subsections (8) and (9) of this section, the period prescribed for the department to allow or make a refund of any overpayment of tax paid under sections 1 to 13 of this 2015 Act shall be as provided in ORS 314.415.

(8)(a) The department shall first apply any overpayment of tax to any marijuana tax that is then owed.

(b) If after any offset against any delinquent amount the overpayment of tax remains greater than \$1,000, the entire refund shall be applied as a credit against the next subsequent calendar quarter as an estimated payment.

(9) The department may not make a refund of, or credit, any overpayment of tax under sections 1 to 13 of this 2015 Act that was credited to the account of a marijuana retailer under subsection (8)(b) of this section if the return for that tax period is not filed within three years after the due date of that return.

HB 2041, Section 4 establish tax payment to the Department of Revenue and enforcement procedures. The law reads:

**SECTION 4. (1) Every person who collects any amount under section 3 of this 2015 Act shall hold the same in trust for the State of Oregon and for the payment thereof to the Department of Revenue in the manner and at the time provided in section 3 of this 2015 Act.**

**(2) At any time a marijuana retailer fails to remit any amount collected, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. The warrant shall be issued, recorded and proceeded upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes.**

**(3)(a) In the case of a marijuana retailer that is assessed pursuant to the provisions of ORS 305.265 (12) and 314.407 (1), the department may issue a notice of liability to any officer, employee or member of the marijuana retailer within three years from the time of assessment. Within 30 days from the date the notice of liability is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the liability and, if desired, request a conference. A conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.**

**(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of liability. Within 90 days from the date the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal to the tax court in the manner provided for an appeal from a notice of assessment.**

**(c) If the department does not receive payment or written objection to the notice of liability within 30 days after the notice of liability was mailed, the notice of liability becomes final. In that event, the officer, employee or member may appeal the notice of liability to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.**

**(4)(a) In the case of a failure to file a return on the due date, governed by the provisions of ORS 305.265 (10) and 314.400, the department, in addition to any action described in the**

provisions of ORS 305.265 (10) and 314.400, may send notices of determination and assessment to any officer, employee or member any time within three years after the assessment. The time of assessment against the officer, employee or member is 30 days after the date the notice of determination and assessment is mailed. Within 30 days from the date the notice of determination and assessment is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or advise the department in writing of objections to the assessment and, if desired, request a conference. A conference shall be governed by the provisions of ORS 305.265 pertaining to a conference requested from a notice of deficiency.

(b) After a conference or, if no conference is requested, a determination of the issues considering the written objections, the department shall mail the officer, employee or member a conference letter affirming, canceling or adjusting the notice of determination and assessment. Within 90 days from the date the conference letter is mailed to the officer, employee or member, the officer, employee or member shall pay the assessment, plus penalties and interest, or appeal in the manner provided for an appeal from a notice of assessment.

(c) If the department does not receive payment or written objection to the notice of determination and assessment within 30 days after the notice of determination and assessment was mailed, the notice of determination and assessment becomes final. In that event, the officer, employee or member may appeal the notice of determination and assessment to the tax court within 90 days after it became final in the manner provided for an appeal from a notice of assessment.

(5)(a) More than one officer or employee of a corporation may be held jointly and severally liable for payment of taxes.

(b) Notwithstanding the confidentiality provisions of section 10 of this 2015 Act, if more than one officer or employee of a corporation may be held jointly and severally liable for payment of taxes, the department may require any or all of the officers, members or employees who may be held liable to appear before the department for a joint determination of liability. The department shall notify each officer, member or employee of the time and place set for the determination of liability.

(c) Each person notified of a joint determination under this subsection shall appear and present such information as is necessary to establish that person's liability or nonliability for payment of taxes to the department. If a person who was notified fails to appear, the department shall make its determination on the basis of all the information and evidence presented. The department's determination is binding on all persons notified and required to appear under this subsection.

(d)(A) If an appeal is taken to the Oregon Tax Court pursuant to section 10 of this 2015 Act by any person determined to be liable for unpaid taxes under this subsection, each person required to appear before the department under this subsection shall be impleaded by the plaintiff. The department may implead any officer, employee or member who may be held jointly and severally liable for the payment of taxes. Each person impleaded under this paragraph shall be made a party to the action before the tax court and shall make available to the tax court the information that was presented before the department, as well as other information that may be presented to the court.

(B) The court may determine that one or more persons impleaded under this paragraph are liable for unpaid taxes without regard to any earlier determination by the department that an impleaded person was not liable for unpaid taxes.

(C) If a person required to appear before the court under this subsection fails or refuses to appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court, the court shall make its determination on the basis of all the evidence introduced. Notwithstanding section 10 of this 2015 Act, the evidence constitutes a public record and shall be available to the parties and the court. The determination of the tax court is binding on all persons made parties to the action under this subsection.

(e) This section may not be construed to preclude a determination by the department or the Oregon Tax Court that more than one officer, employee or member are jointly and severally liable for unpaid taxes.

HB 2041, Section 5 requires that a recreational marijuana retailer retain records for 5 years for the retail sales. The law reads:

**SECTION 5. (1) A marijuana retailer shall keep receipts, invoices and other pertinent records related to retail sales of marijuana items in the form required by the Department of Revenue. Each record shall be preserved for five years from the time to which the record relates, or for as long as the marijuana retailer retains the marijuana items to which the record relates, whichever is later. During the retention period and at any time prior to the destruction of records, the department may give written notice to the marijuana retailer not to destroy records described in the notice without written permission of the department.**

Notwithstanding any other provision of law, the department shall preserve reports and returns filed with the department for at least five years.

(2) The department or its authorized representative, upon oral or written demand, may make examinations of the books, papers, records and equipment of persons making retail sales of marijuana items and any other investigations as the department deems necessary to carry out the provisions of sections 1 to 13 of this 2015 Act.

HB 2041, Section 6 allows the Oregon Department of Revenue, by order or subpoena, records. The law reads:

**SECTION 6. (1) The Department of Revenue has authority, by order or subpoena to be served with the same force and effect and in the same manner as a subpoena is served in a civil action in the circuit court, or the Oregon Tax Court, to require the production at any time and place the department designates of any books, papers, accounts or other information necessary to carry out sections 1 to 13 of this 2015 Act. The department may require the attendance of any person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to the person.**

(2) If a person fails to comply with a subpoena or order of the department or to produce or permit the examination or inspection of any books, papers, records and equipment pertinent to an investigation or inquiry under sections 1 to 13 of this 2015 Act, or to testify to any matter regarding which the person is lawfully interrogated, the department may apply to the Oregon Tax Court or to the circuit court of the county in which the person resides or where the person is for an order to the person to attend and testify, or otherwise to comply with the demand or request of the department. The department shall apply to the court by ex parte motion, upon which the court shall make an order requiring the

person against whom the motion is directed to comply with the request or demand of the department within 10 days after the service of the order, or within the additional time granted by the court, or to justify the failure within that time. The order shall be served upon the person to whom it is directed in the manner required by this state for service of process, which service is required to confer jurisdiction upon the court. Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section is in addition to other remedies, civil or criminal, existing under the tax laws or other laws of this state.

HB 2041, Section 7 allows disclosure of certain information by the Department of Revenue and Oregon Liquor Control Commission. The law reads:

**SECTION 7.** (1) Notwithstanding the confidentiality provisions of section 10 of this 2015 Act, the Department of Revenue may disclose information received under sections 1 to 13 and 19 of this 2015 Act to the Oregon Liquor Control Commission to carry out the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, and sections 1 to 13 of this 2015 Act.

(2) The commission may disclose information obtained pursuant to sections 3 to 70, chapter 1, Oregon Laws 2015, and sections 1 to 13 of this 2015 Act to the department for the purpose of carrying out the provisions of sections 3 to 70, chapter 1, Oregon Laws 2015, and sections 1 to 13 of this 2015 Act.

(3) Except as otherwise provided in sections 3 to 70, chapter 1, Oregon Laws 2015, and sections 1 to 13 of this 2015 Act, a person aggrieved by an act or determination of the department or its authorized agent under sections 1 to 13 and 19 of this 2015 Act may appeal, within 90 days after the act or determination, to the Oregon Tax Court in the manner provided in ORS 305.404 to 305.560. These appeal rights are the exclusive remedy available to determine the person's liability for the tax imposed under sections 1 to 13 of this 2015 Act.

HB 2041, Section 8 authorizes the Department of Revenue to enforce provisions of HB 2014 on collection of taxes and requires an agreement between OLCC and DOR. The law reads:

**SECTION 8.** (1) The Department of Revenue shall administer and enforce sections 1 to 13 of this 2015 Act. The department is authorized to establish rules and procedures for the implementation and enforcement of sections 1 to 13 of this 2015 Act that are consistent with sections 1 to 13 of this 2015 Act and that the department considers necessary and appropriate to administer and enforce sections 1 to 13 of this 2015 Act.

(2) The Oregon Liquor Control Commission shall enter into an agreement with the department for the purpose of administering and enforcing those provisions of sections 1 to 13 of this 2015 Act, and rules or procedures established for the purpose of implementing and enforcing sections 1 to 13 of this 2015 Act, that the commission and the department determine are necessary for the effective and efficient administration, implementation and enforcement of sections 1 to 13 of this 2015 Act.

HB 2041, Section 9 establishes requirements if a tax imposed by a retailer on a sale that is not taxable to be returned to the consumer. The law reads:

**SECTION 9. (1)(a) When an amount represented by a marijuana retailer at retail to a consumer as constituting the tax imposed under sections 1 to 13 of this 2015 Act is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the consumer to the marijuana retailer, the excess tax paid shall be returned by the marijuana retailer to the consumer upon written notification by the Department of Revenue or the consumer.**

(b) The written notification must contain information necessary to determine the validity of the consumer's claim.

(2) If the marijuana retailer does not return the excess tax within 60 days after mailing of the written notification required under subsection (1) of this section, the consumer may appeal to the department for a refund of the amount of the excess tax, in the manner and within the time allowed under rules adopted by the department.

(3) If excess tax is returned to the consumer by the department, the department may issue a notice of deficiency for the excess tax to the marijuana retailer in the manner provided under ORS 305.265.

HB 2041, Section 10 establishes the requirements for audit and returns. The law reads:

**SECTION 10. Except as otherwise provided in sections 1 to 13 of this 2015 Act or where the context requires otherwise, the provisions of ORS chapters 305 and 314 as to the audit and examination of returns, periods of limitation, determination of and notices of deficiencies, assessments, collections, liens, delinquencies, claims for refund and refunds, conferences, appeals to the Oregon Tax Court, stays of collection pending appeal, confidentiality of returns and the penalties relative thereto, and the procedures relating thereto, apply to the determinations of taxes, penalties and interest under sections 1 to 13 of this 2015 Act.**

HB 2041, Section 11 allows the Department of Revenue to pay expenses and fees collected from the marijuana tax. The law reads:

**SECTION 11. (1) All moneys received by the Department of Revenue under sections 1 to 13 and 21a of this 2015 Act shall be deposited in the State Treasury and credited to a suspense account established under ORS 293.445. The department may pay expenses for the administration and enforcement of sections 1 to 13 and 21a of this 2015 Act out of moneys received from the tax imposed under section 2 of this 2015 Act. Amounts necessary to pay administrative and enforcement expenses are continuously appropriated to the department from the suspense account.**

(2) After the payment of administrative and enforcement expenses and refunds or credits arising from erroneous overpayments, the department shall credit the balance of the moneys received by the department under this section to the Oregon Marijuana Account established under section 44, chapter 1, Oregon Laws 2015.

**NOTE:** Section 12 was deleted by amendment. Subsequent sections were not renumbered.

HB 2041, Section 13 allows retailers to retain two percent of the collected 17% tax. The law reads:

**SECTION 13. For the purpose of compensating marijuana retailers for expenses incurred in collecting the tax imposed under section 2 of this 2015 Act, each marijuana retailer is permitted to deduct and retain two percent of the amount of taxes that are collected by the marijuana retailer from all retail sales of marijuana items conducted by the marijuana retailer.**

HB 2041, Section 13 allows retailers to retain two percent of the collected 17% tax. The law reads:

**SECTION 13. For the purpose of compensating marijuana retailers for expenses incurred in collecting the tax imposed under section 2 of this 2015 Act, each marijuana retailer is permitted to deduct and retain two percent of the amount of taxes that are collected by the marijuana retailer from all retail sales of marijuana items conducted by the marijuana retailer.**

HB 2041, Section 14 identifies the distribution of collected taxes. 10% of the collected taxes go to cities to assist local law enforcement. There are two methodologies. One before July 1, 2017 based on population. After July 1, 2017 the distribution is based on producers, processors and wholesalers based on licenses issued in the city and for retailers based on licenses issued in the city. Section 14 also states that if any combination of producers, processors, wholesalers, retailers or certificates are banned a city cannot share in the tax distribution. The law reads:

#### OTHER AMENDMENTS

**SECTION 14.** Section 44, chapter 1, Oregon Laws 2015, is amended to read:

**Sec. 44.** (1) There is established the Oregon Marijuana Account, separate and distinct from the General Fund.

**(2) The account shall consist of moneys transferred to the account under section 11 of this 2015 Act.**

**[(2)] (3) [At the end of each month, the Oregon Liquor Control Commission] Subject to subsection (4) of this section, the Department of Revenue shall certify the amount of moneys available for distribution in the Oregon Marijuana Account and[, after withholding such moneys as**

**it may deem necessary to carry out its obligations under sections 3 to 70 of this Act, shall within 35 days of the month for which a distribution is made] distribute the moneys as follows:**

**(a) Forty percent [shall] must be transferred to the Common School Fund;**

**(b) Twenty percent [shall] must be transferred to the Mental Health Alcoholism and Drug Services Account established under ORS 430.380;**

**(c) Fifteen percent [shall] must be transferred to the State Police Account established under ORS 181.175;**

**(d) To assist local law enforcement in performing its duties under [this Act, ten percent shall] sections 3 to 70, chapter 1, Oregon Laws 2015, 10 percent must be transferred to the cities of [the] this state in the following shares:**

**(A) For all distributions made from the Oregon Marijuana Account before July 1, 2017, in such shares as the population of each city bears to the population of the cities of [the] this state, as**

determined by *[the State Board of Higher Education]* **Portland State University** last preceding such apportionment, under ORS 190.510 to 190.610; and

(B) For all distributions made from the Oregon Marijuana Account on or after July 1, 2017:

(i) Fifty percent of *[such ten]* **the 10** percent *[shall]* **must** be transferred in such shares as the number of licenses issued by the commission under sections 19 to 21, **chapter 1, Oregon Laws 2015**, *[of this Act]* during the calendar year preceding the date of the distribution for premises located in each city bears to the number of such licenses issued by the commission during such calendar year for all premises in *[the]* **this** state; and

(ii) Fifty percent of *[such ten]* **the 10** percent *[shall]* **must** be transferred in such shares as the number of licenses issued by the commission under section 22, **chapter 1, Oregon Laws 2015**, *[of this Act]* during the calendar year preceding the date of the distribution for premises located in each city bears to the number of such licenses issued by the commission during such calendar year for all premises in *[the]* **this** state;

(e) To assist local law enforcement in performing its duties under *[this Act, ten percent shall]* **sections 3 to 70, chapter 1, Oregon Laws 2015, 10 percent must** be transferred to counties in the following shares:

(A) For all distributions made from the Oregon Marijuana Account before July 1, 2017, in such shares as their respective populations bear to the total population of *[the]* **this** state, as estimated from time to time by *[the State Board of Higher Education]* **Portland State University**; and

(B) For all distributions made from the Oregon Marijuana Account on or after July 1, 2017:

(i) Fifty percent of *[such ten]* **the 10** percent *[shall]* **must** be transferred in such shares as the number of licenses issued by the commission under sections 19 to 21, **chapter 1, Oregon Laws 2015**, *[of this Act]* during the calendar year preceding the date of the distribution for premises located in each county bears to the number of such licenses issued by the commission during such calendar year for all premises in *[the]* **this** state; and

(ii) Fifty percent of *[such ten]* **the 10** percent *[shall]* **must** be transferred in such shares as the number of licenses issued by the commission under section 22, **chapter 1, Oregon Laws 2015**, *[of this Act]* during the calendar year preceding the date of the distribution for premises located in each county bears to the number of such licenses issued by the commission during such calendar year for all premises in *[the]* **this** state; and

(f) Five percent *[shall]* **must** be transferred to the Oregon Health Authority to be used for the establishment, operation[,] and maintenance of alcohol and drug abuse prevention, early intervention and treatment services.

**(4) A city or county that adopts ordinances prohibiting the establishment of a premises for which a license is issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, or prohibiting the establishment of an entity for which registration is required under ORS 475.300 to 475.346, is not eligible to receive distributions under this section.**

*[(3)]* **(5)** It is the intent of *[this section]* **the Legislative Assembly** that the moneys distributed from the Oregon Marijuana Account to the *[distributees]* **persons listed** in subsection *[(2)]* **(3)** of this section are in addition to, **and not in lieu of**, any other *[available]* moneys **available** to such *[distributees and do not supplant moneys available from any other source]* **persons**.

## Marijuana Subcommittee Recommendation

The Marijuana Subcommittee met on March 3, 2016 and discussed the tax issue. The Subcommittee subsequently made a recommendation for staff to bring the issue of taxes on marijuana to the City

Council.

**FISCAL IMPACT:**

The fiscal impact on recreational marijuana taxes cannot be determined at this time as no licensees have been issued by the Oregon Liquor Control Commission and local regulation on recreational marijuana retail facilities has not been approved by the City Council. Medical marijuana taxes collected during the last quarter of 2015 totaled \$3223.19.

**STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS):**

Goal #3 – Provide a high level of Public Safety services. Objective 3.4 – Identify and develop regulations and codes addressing the changing laws regarding the distribution and use of marijuana. The appropriate amount of tax to be applied to recreational and medical marijuana sales furthers the goal and objective.

Goal #7 – Manage and operate the city government in an efficient and effective manner. Objective 7.1 – Develop a sustainable budget identifying appropriate funding sources, has appropriate contingencies and foresees issues that may arise in the future to withstand the ups and downs of the economy. The marijuana tax is a local funding source that can assist in providing resources to operate the City of Newberg.

Attachment: 1. Ordinance No. 2014-2777



## ORDINANCE No. 2014-2777

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

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### RECITALS:

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

### THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

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

#### **SECTION 3.40.010 Purpose.**

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

#### **SECTION 3.40.020 Definitions.**

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

- A. "Director" means the Director of Finance for the city of Newberg or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.
- C. "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- D. "Oregon Medical Marijuana Program" means the office within the Oregon Health authority that administers the provisions of ORS 475.300 through 475.346, the Oregon

Medical Marijuana Act, and all policies and procedures pertaining thereto.

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

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

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

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

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

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

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

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

**SECTION 3.40.030 Levy of Tax.**

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

B. The amount of tax levied is as follows:

1) Five percent (5%) of the gross sale amount paid to the seller by a registry identification cardholder.

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

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

**SECTION 3.40.040 Deductions.**

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

A. Refunds of sales actually returned to any purchaser;

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

**SECTION 3.40.050 Seller Responsible For Payment Of Tax.**

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

First quarter: January, February, March

Second quarter: April, May, June

Third quarter: July, August, September

Fourth quarter: October, November, December

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

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

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

E. Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.

F. Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.

**SECTION 3.40.060 Penalties And Interest.**

A. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax.

B. Any seller who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

C. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs A and B of this section.

D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.

F. A seller who fails to remit the tax within the required time may petition the City Manager for waiver and refund of the penalty or a portion of it. The manager may, if good cause is shown, direct a refund of the penalty or a portion of it. Any such hearing will be conducted under the procedures described in section 3.30.080.

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

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

**SECTION 3.40.080 Appeal and Redetermination.**

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

**SECTION 3.40.090. Refunds.**

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

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

**SECTION 3.40.100 Actions to Collect.**

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

**SECTION 3.40.110 Penalties.**

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

**SECTION 3.40.120 Confidentiality.**

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

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

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

**SECTION 3.40.130 Audit of Books, Records or Persons.**

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

**SECTION 3.40.140 Forms And Regulations.**

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

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

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

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

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

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: November 5, 2014.

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

**AYE: 5**

**NAY: 2**

**ABSENT:**

**ABSTAIN: 1**



Sue Ryan, Interim City Recorder

**ATTEST** by the Mayor this 9th day of October, 2014.

  
Bob Andrews, Mayor

# *REQUEST FOR COUNCIL ACTION*

**DATE ACTION REQUESTED: April 4, 2016**

<b>Order</b> ___	<b>Ordinance</b> ___	<b>Resolution</b> ___	<b>Motion</b> ___	<b>Information</b> ___
<b>No.</b>	<b>No.</b>	<b>No. 2016-3265</b>		

**SUBJECT: Resolution Updating Performance Standards, Evaluation Processes and Position Descriptions for Charter Position Employees**

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

**RECOMMENDATION:**

Adopt Resolution No. 2016-3265 updating performance standards, evaluation processes and position descriptions for Charter position employees.

**EXECUTIVE SUMMARY:**

The following information, inclusive of position descriptions and evaluation forms, is intended to serve as a tool for the City Council to evaluate the performance of the three Charter position employees under contract with the City. Each employee’s performance criteria will be specifically stated in the applicable evaluation form.

For the City Manager the areas of concentration will be: Management, Planning Goals, Communications, Fiscal Agent/Budget Officer, Community Relations and, Intergovernmental/Interagency Relations. For the City Attorney the areas of concentration will be: Management, Planning Goals, Communications; Fiscal Agent; Community Relations, Intergovernmental/Interagency Relations, Consultative Legal Services and, Legal Preparation. And finally, the areas of concentration for the Municipal Judge will be: Case Management, Impartiality & Judicial Conduct, Knowledge of Law, Legal Practice & Court Management, Interdepartmental Relations and, Fiscal Planning & Goals. The evaluation process is also designed to create performance goals for these positions for the next year.

1. What is a performance evaluation?
  - a. The process of planning, reviewing, and providing feedback on the work performance of an employee.
  - b. A means of demonstrating organizational accountability to citizens, employees, and key regional partners.
  - c. A means of maintaining alignment between goals set and achievements reached.
  - d. An element of decision about compensation.
  - e. A means of determining the need for further professional development, education, or training.
  
2. What is the role of the City Council?
  - a. To be familiar with all policy established by the Council that describes how authority is delegated to the specific Charter position employees and monitor its proper use: the employee’s role and his/her authority and accountability; constraints on the employee’s authority which establish the practical, ethical, and legal boundaries within which all staff activity and decision-making will take place and be monitored; and what the Council intends for the City to achieve.

- b. To provide annual review of the Charter position employee's work performance and results achievement.
  - c. To maintain a balance of support and trust with a relationship of accountability with the Charter position employee.
3. What is the process?
- a. The Mayor and Council President shall serve as a Quality Review Team to coordinate a full Council annual performance review of the City Manager, City Attorney and Municipal Judge. The City Council shall designate an alternate member of the Council who will only serve in the absence of the Mayor or Council President for any team meetings.
  - b. The Quality Review Team will annually review the applicable evaluation form and, utilizing the staff assistance of the Human Resources Director present a report to the City Council if any modifications have been made to the form.
  - c. The Quality Review Team will coordinate the distribution and collection of evaluation forms to members of the City Council and compile a summary of the results of the evaluation. The Human Resources Director will distribute the Self-Evaluation form to the Charter position employee and the Staff Evaluation form(s) to the direct report(s) of the Charter position employee. After collecting these forms the Human Resources Director will send them to the Quality Review Team for compilation.
  - d. The Quality Review Team will review the results of the evaluation with the Charter position employee in an executive session of the Council. The Council may also take this opportunity to review and consider adjustment to the Employment Contract of the Charter position employee.
  - e. A summary of the evaluation results and, if applicable, changes to the Charter position employee's Employment Contract will be presented at a regular City Council meeting.
  - f. The Quality Review Team will meet annually with each Charter position employee to review adherence to governance policies, the employee's Evaluation Summary, and their progress on their annual goals.
  - g. The Quality Review Team is responsible for providing informal updates to the employee regarding their performance and reporting to the Council as appropriate.
  - h. Based on the results of the comprehensive annual review, Council determines the need for further professional development, education, training or other methods of evaluation for each Charter position employee.

4. Opportunities

Through this process and in a relationship of trust and support, Council members and the individual Charter position employee are presented an opportunity to engage in an honest dialogue about what is being accomplished, where the gaps may be, and how to maintain progress. Good relationships promote candor, constructive planning and provide in-depth evaluation of the WHAT and the HOW of the respective position:

- a. Examples of WHAT include; fulfillment of the City Mission; and, achievement of the Annual Performance Plan objectives.
- b. Examples of HOW include: Personal qualities such as integrity and commitment; interpersonal skills such as effective communication and influence; and leadership skills such as vision, staff development, innovation, and process efficiency.

5. Influencing Factors
  - a. Council members who may have no experience in performance management.
  - b. Council members represent a diverse group of voices that may not be unified in their expectations of the Charter positions.
  - c. Relationships that are too close, supportive, and friendly, may produce a reluctance to bring up areas of performance that need improvement and create a tendency to avoid conflict.
  - d. Employment Contract adjustments are not indicative of the employee's overall evaluation.

**The evaluation form rates a Charter position employee's performance at four levels:**

**Needs Improvement:** Employee has had adequate time, training, and the opportunity to achieve the fully effective level but work performance in one or more areas is below the level of full competence and effectiveness.

**Developing:** Employee has not yet achieved full effectiveness but is in a training or development mode AND the rate of growth is proceeding at a satisfactory rate.

**Fully Effective:** Employee has achieved full competency in all critical measures of work performance and overall contribution is entirely satisfactory.

**Exceeds Expectations:** Employee work performance exceeds normal expectations of the position.

**No Opinion/Not Observed:** Evaluator has no opinion and/or knowledge in this area.

NI = 1  
D = 2  
FE = 3  
EE = 4  
N/O

**FISCAL IMPACT:**

There is no direct cost for a performance evaluation process, just time involved. Direct cost may be incurred if elements of a Charter position employee's compensation is adjusted as a result of a positive evaluation; cost will vary dependent upon the specific Charter position employee classification.

**STRATEGIC ASSESSMENT:**

Performance evaluation of a City Charter position employee is necessary in order to enhance communication between the City Council and the Charter position employee concerning their performance in meeting their job objectives, recognizing achievements, outlining future personal goals and the furtherance of Council goals. It is also an opportunity to review, and modify, if appropriate, a Charter position employee's Employment Contract.



## **RESOLUTION No. 2016-3265**

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### **A RESOLUTION UPDATING PERFORMANCE STANDARDS, EVALUATION PROCESSES AND POSITION DESCRIPTIONS FOR CHARTER POSITION EMPLOYEES**

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#### **RECITALS:**

1. In accordance with the Newberg City Charter, the City Manager, City Attorney and Municipal Judge are classified as contract Charter position employees, and report directly to the Mayor and City Council and is supervised by the governing body.
2. The City has a contract with each of the Charter position employees and pursuant to those contracts, the City Council will evaluate their performance in executive session.
3. The Open Meetings Law of the state of Oregon allows the evaluation of the job performance of Charter position employees to be conducted in executive session by the City Council.
4. The City Councilors, and the Charter position employee will meet in executive session to discuss their annual evaluation.
5. The Quality Review Team will submit the Charter position employee's written evaluation, which will be placed in their personnel file after being adopted by the City Council.

#### **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The Mayor and Council President shall serve as a Quality Review Team to coordinate the Council's annual performance review of the City Manager, City Attorney and Municipal Judge. The City Council shall designate an alternate member of the Council who will only serve in the absence of the Mayor or Council President for any team meetings.
2. The performance evaluation forms for the City Manager, City Attorney and the Municipal Judge, attached as Exhibit A, have been updated to reflect the position's essential duties and responsibilities as outlined in their position descriptions, Exhibit B. These documents will be used as tools for evaluation of the performance of these Charter position employees and, by this reference, is hereby adopted.
3. The Charter position employees shall be given a copy of their position's evaluation form to review prior to the Quality Review Team beginning the annual evaluation process.

4. After the evaluation process is completed, the employee will be given a copy to sign and on which they may make any written comments; the completed written evaluation shall be placed in the employee's personnel file.
5. If the Charter position employee's performance review warrants a change to the employee's Employment Contract, said document will be prepared by the Human Resources Director at the direction of the Quality Review Team for presentation to the City Council for consideration and adoption.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 5, 2016.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 4th day of April, 2016.

\_\_\_\_\_  
Sue Ryan, City Recorder

**ATTEST** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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

Exhibit "A"  
To Resolution No. 2016-3265

**CITY COUNCIL EVALUATION OF CITY MANAGER  
FOR 20xx-20xx  
By Authority of Resolution No. 2016-3265**

The Council adopted a rating system of one (1) to four (4):

- One.** (1) is *Needs Improvement*
- Two.** (2) is *Developing*
- Three.** (3) is *Fully Effective*
- Four.** (4) is *Exceeds Expectations*
- N/O** *No Opinion or Not Observed*

**I. PERFORMANCE EVALUATION**

**Directions:** Write a number on the line in front of each item using the rating scale to represent your assessment of performance for the required knowledge and skills, and the typical examples of work in the position description. The numerical rating is an attempt to quantify opinions and judgments about specific areas of responsibility. While subjective, it suggests a useful emphasis or relative degree of acceptability.

**1. Management:**

\_\_\_\_\_ Responsible for the management and supervision of all city departments, agencies, and offices, with the exception of the City Attorney and his/her staff and the Municipal Judge, to achieve established goals within available resources by appropriately delegating duties.

\_\_\_\_\_ Oversees the administration of workloads and staff assignments by studying, standardizing, and determining work roles, responsibilities, and procedures to improve efficiency and effectiveness of operations; preparing work schedules to expedite workflow.

\_\_\_\_\_ Appoints and removes all department heads, officers, and employees of the city, except for members of the City Council and Charter position's and their employees.

\_\_\_\_\_ Assures the training, motivation, and evaluation of city staff and directs changes as needed.

**Directions:** Using the overall rating scale, circle the number to evaluate the overall area of responsibility.

**Overall Rating for this Area of Responsibility:**

Criteria 1	1	2	3	4	N/O
Management	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement* or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_

\_\_\_\_\_

**2. Planning Goals:**

- \_\_\_\_\_ Provides leadership and direction in the development of short and long-range plans with city staff and City Council.
- \_\_\_\_\_ Oversees the administration of plans, reviews progress, and directs changes as needed, based on new developments in technology, legislation, practices, and regulations.
- \_\_\_\_\_ Investigates, integrates, and implements technology where administratively and fiscally feasible.
- \_\_\_\_\_ Gathers, interprets, and prepares data for studies, reports, and policy recommendations.
- \_\_\_\_\_ Coordinates department activities with other departments and agencies as needed.

**Overall Rating for this Area of Responsibility:**

Criteria 2	1	2	3	4	N/O
Planning Goals	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement*, or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_

**3. Communications:**

- \_\_\_\_\_ Provides written and oral professional advice to the City Council and department heads in a timely, clear, thorough, and concise manner.
- \_\_\_\_\_ Communicates official plans, policies, and procedures to staff and to the general public.
- \_\_\_\_\_ Presents information to councils, boards, commissions, civic groups, and to the general public.
- \_\_\_\_\_ Issues clearly written and concise oral instructions to assign duties and examine work for exactness, neatness, and conformance to policies and procedures.
- \_\_\_\_\_ Maintains harmony among City staff; provides direction and instruction in a constructive manner; accepts differing opinions in a positive manner; and, works to resolve issues.

**Overall Rating for this Area of Responsibility:**

Criteria 3	1	2	3	4	N/O
Communications	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement*, or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_

**4. Fiscal Agent/Budget Officer:**

- \_\_\_\_\_ Assures that assigned areas of responsibility are performed within budget and demonstrates effective and efficient use of budgeted funds, personnel, materials, facilities
- \_\_\_\_\_ Performs cost control activities and monitors revenues and expenditures in all departments, to assure sound fiscal control and to encourage innovative practices.
- \_\_\_\_\_ Prepares annual proposed budget and ensures that the budget addresses the City Council’s goals and objectives.

**Overall Rating for this Area of Responsibility:**

Criteria 4	1	2	3	4	N/O
Fiscal Agent/ Budget Officer	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement*, or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_  
\_\_\_\_\_

**5. Community Relations:**

- \_\_\_\_\_ Performs and assists City staff in performing duties to adjust errors and to address complaints.
- \_\_\_\_\_ Projects a positive public image and is courteous to the public at all times.
- \_\_\_\_\_ Assures ample public promotion of City initiatives in cooperation with respective staff.
- \_\_\_\_\_ Maintains effective relations with media representatives.
- \_\_\_\_\_ To build a sense of Community, promotes cooperation among the City Council, staff, and citizens in developing policies.

**Overall Rating for this Area of Responsibility:**

Criteria 5	1	2	3	4	N/O
Community Relations	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement*, or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_  
\_\_\_\_\_

**6. Intergovernmental/Interagency Relations:**

\_\_\_\_\_ Maintains effective communication with local, regional, state, and federal government agencies.

\_\_\_\_\_ Actively pursues financial resources (grants) from other agencies.

\_\_\_\_\_ Contributes to good government through participation in local, regional, state, and professional committees and organizations.

\_\_\_\_\_ Lobbies effectively with legislators and state agencies regarding city programs and projects.

**Overall Rating for this Area of Responsibility:**

Criteria 6	1	2	3	4	N/O
Intergovernmental/ Interagency Relations	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement*, or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_  
\_\_\_\_\_

**II. OVERALL EVALUATION:**

Criteria 7	1	2	3	4	
Overall Evaluation	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement*, or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Printed Name** \_\_\_\_\_

**CITY COUNCIL EVALUATION OF CITY ATTORNEY  
FOR 20XX-20XX  
By Authority of Resolution No. 2016-3265**

The Council adopted a rating system of one (1) to four (4):

- One (1) is *Needs Improvement***
- Two (2) is *Developing***
- Three (3) is *Fully Effective***
- Four (4) is *Exceeds Expectations***
- N/O *No Opinion or Not Observed***

**I. PERFORMANCE EVALUATION**

**Directions:** Write a number on the line in front of each item using the rating scale to represent your assessment of performance for the required knowledge and skills, and the typical examples of work in the position description. The numerical rating is an attempt to quantify opinions and judgments about specific areas of responsibility. While subjective, it suggests a useful emphasis or relative degree of acceptability.

**1. Management:**

- \_\_\_\_\_ Responsible for the management and supervision of the Legal Department to achieve goals within available resources; appoints and removes all department staff.
- \_\_\_\_\_ Appropriately delegates duties and responsibilities to Legal staff; oversees the administration of workloads and staff assignments.
- \_\_\_\_\_ Standardizes procedures to improve efficiency and effectiveness of operations; prepare work schedules to expedite workflow.
- \_\_\_\_\_ Assures the training, motivation, and evaluation of Legal Department staff and directs changes as needed.

**Directions:** Using the overall rating scale, circle the number to evaluate this overall area of responsibility.

**Overall Rating for this Area of Responsibility:**

Criteria I	1	2	3	4	N/O
Management	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of: 1) *needs improvement*, or 4) *exceeds expectations*.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**2. Planning Goals:**

- \_\_\_\_\_ Provides leadership and direction in the development of short and long-range plans with Legal staff and City Council.
- \_\_\_\_\_ Administers plans, reviews progress, and directs changes as needed based on new developments in technology, legislation, best practices, and regulations.
- \_\_\_\_\_ Investigates, integrates, and implements technology where administratively and fiscally feasible.
- \_\_\_\_\_ Gathers, interprets, and prepares data for studies, reports, and policy recommendations.
- \_\_\_\_\_ Coordinates department activities with other departments and agencies as needed.

**Overall Rating for this Area of Responsibility:**

Criteria 2	1	2	3	4	N/O
Planning Goals	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of 1) *needs improvement*, or 4) *exceeds expectations*.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**3. Communications:**

- \_\_\_\_\_ Provides written and oral professional legal advice to the City Council, City Manager, and department heads in a timely, clear, thorough, and concise manner.
- \_\_\_\_\_ Communicates official plans, policies, and procedures to Legal staff and to the general public.
- \_\_\_\_\_ Presents information to councils, boards, commissions, civic groups, and to the general public.
- \_\_\_\_\_ Issues clearly written and concise oral instructions to assign duties and examine work for exactness, neatness, and conformance to policies and procedures.
- \_\_\_\_\_ Maintains harmony among Legal staff; provides direction and instruction in a constructive manner; accepts differing opinions in a positive manner; and, and works to resolve issues.
- \_\_\_\_\_ Timeliness of communication to City Council and staff.

**Overall Rating for this Area of Responsibility:**

Criteria 3	1	2	3	4	N/O
Communications	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of: 1) *needs improvement*, or 4) *exceeds expectations*.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**4. Fiscal Agent:**

- \_\_\_\_\_ Assures assigned areas of responsibility are performed within budget and demonstrates effective and efficient use of budgeted funds, personnel, materials, facilities, and time.
- \_\_\_\_\_ Performs cost control activities and monitors revenues and expenditures in the Legal Department, to assure sound fiscal control and to encourage innovative practices.
- \_\_\_\_\_ Prepares annual department budget requests and administers the department's adopted budget.

**Overall Rating for this Area of Responsibility:**

Criteria 4	1	2	3	4	N/O
Fiscal Agent	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of: 1) *needs improvement*, or 4) *exceeds expectations*.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**5. Community Relations:**

- \_\_\_\_\_ Performs, and assists City staff in performing their duties in addressing issues and complaints.
- \_\_\_\_\_ Projects a positive public image and is courteous to the public at all times.
- \_\_\_\_\_ Maintain effective relations with media representatives.
- \_\_\_\_\_ To build a sense of Community, promotes cooperation among the City Council, staff, and citizens in developing policies.

**Overall Rating for this Area of Responsibility:**

Criteria 5	1	2	3	4	N/O
Community Relations	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of: 1) *needs improvement*, or 4) *exceeds expectations*.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**6. Intergovernmental/Interagency Relations:**

- \_\_\_\_\_ Maintains effective communication with local, regional, state, and federal government agencies.
- \_\_\_\_\_ Provides legal advice to City staff pursuing financial resources (grants) from other agencies.
- \_\_\_\_\_ Contributes to good government through participation in local, regional, state, and professional committees and organizations.
- \_\_\_\_\_ Confers with colleagues with specialty areas of law to establish and verify basis for legal proceedings; and serves as a liaison between outside legal counsel and City officials on specialized legal issues.

**Overall Rating for this Area of Responsibility:**

Criteria 6	1	2	3	4	N/O
Intergovernmental/ Interagency Relations	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of: 1) *needs improvement*, or 4) *exceeds expectations*.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**7. Consultative Legal Services:**

- \_\_\_\_\_ Advises the City Council of current and future-focused legal trends; issues legal opinions.
- \_\_\_\_\_ Advises City officials of changes to state or federal laws affecting City operations.
- \_\_\_\_\_ Interprets laws, rulings, and regulations for City officials and staff.
- \_\_\_\_\_ Recommends for adoption by the City Council such measures deemed necessary and expedient.

**Overall Rating for this Area of Responsibility:**

Criteria 7	1	2	3	4	N/O
Consultative Legal Services	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of: 1) *needs improvement*, or 4) *exceeds expectations*.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**8. Legal Preparation:**

\_\_\_\_\_ Drafts ordinances, resolutions, contracts, agreements, deeds, leases, and franchises; reviews documents prepared by other departments, agencies, and parties.

\_\_\_\_\_ Approves ordinances, resolutions, and contracts as to legal form; provides legal advice as to substance.

\_\_\_\_\_ Gathers evidence in civil, criminal, and other cases to formulate defense or to initiate legal action; conducts research; interviews clients and witnesses, and handles other details in preparation for trial; prepares legal briefs, arguments and testimony; develops strategy in preparation for presentation in cases; files briefs in the appropriate court.

\_\_\_\_\_ Represents the City in court and before quasi-judicial or administrative agencies of government.

**Overall Rating for this Area of Responsibility:**

Criteria 8	1	2	3	4	N/O
Legal Preparation	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion Not Observed

**Directions:** Use the space below to record specific comments for ratings of: 1) *needs improvement*, or 4) *exceeds expectations*.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**II. OVERALL EVALUATION:**

Overall	1	2	3	4
Summary	Needs Improvement	Developing	Fully Effective	Exceeds Expectations*

**Directions:** Use the space below to record specific comments for ratings of: 1) *needs improvement*, or 4) *exceeds expectations*.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**CITY COUNCIL EVALUATION OF MUNICIPAL JUDGE  
FOR 20XX-20XX  
By Authority of Resolution No. 2016-3265**

The Council adopted a rating system of one (1) to four (4):

- One** (1) is *Needs Improvement*  
**Two** (2) is *Developing*  
**Three** (3) is *Fully Effective*  
**Four** (4) is *Exceeds Expectations*  
**N/O** *No Opinion or Not Observed*

**I. PERFORMANCE EVALUATION**

**Directions:** Write a number on the line in front of each item using the rating scale to represent your assessment of performance for the required knowledge and skills, and the typical examples of work in the position description. The numerical rating is an attempt to quantify opinions and judgments about specific areas of responsibility. While subjective, it suggests a useful emphasis or relative degree of acceptability.

**1. Case Management, Impartiality and Judicial Conduct. Ability to analyze and appraise case facts, rules of evidence and jurisdiction. Ability to maintain judicial impartiality and judicial temperament in cases. Ability to manage court environment to ensure individuals are heard and respected; to maintain an appearance of independence; and to maintain a professional court appearance. Ability to maintain a non-discriminatory attitude and behavior regarding, but not limited to race/ethnicity, religion, gender, age, disability, and sexual orientation.**

- \_\_\_\_\_ Evaluates cases with defendants and their attorneys.
- \_\_\_\_\_ Provides information to attorneys and citizens regarding warrants, appeals and hearing dates and locations.
- \_\_\_\_\_ Establishes policies regarding security, fines, and the entry and docketing of judgments and other matters touching the conduct of proceedings in the court; identifies cases which may be processed by the clerk of the court for individuals who do not desire a formal court appearance; issues warrants as required.
- \_\_\_\_\_ Produces an acceptable quantity and quality of work that is completed within established timelines.
- \_\_\_\_\_ Behaviors on and off the bench reflect well upon the City.
- \_\_\_\_\_ Behavior reflects positively on the judge's character, competence, temperament, and fitness to serve.
- \_\_\_\_\_ Conduct and rulings reflect unbiased actions regarding race/ethnicity, religion, gender, age, disability, and sexual orientation.

**Directions:** Using the overall rating scale, circle the number to evaluate the overall area of responsibility.

**Overall Rating for this Area of Responsibility:**

Criteria 1	1	2	3	4	N/O
Case Management, Impartiality & Judicial Conduct	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion or Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement*, or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_

**2. Knowledge of Law, Legal Practices and Court Management. Expert knowledge of law and general legal principles and practices, including alternative sentencing practices. Knowledge of local ordinances and codes. High-level knowledge of state and constitutional laws specifically relating to traffic regulations, violations, and misdemeanors.**

- \_\_\_\_\_ Presides over trials and renders judgments for misdemeanor crimes, traffic violations, violations of City Codes and any other cases within the jurisdiction of the municipal court.
- \_\_\_\_\_ Presides over pretrial conferences, arraignments, motion hearings, traffic hearings, jury and non-jury trials and various other court matters as required for the city.
- \_\_\_\_\_ Presides at arraignment and trial of persons charged with violating municipal codes; deliberates on and decides cases tried before the court without a jury; conducts legal research on cases before the court; prepares and gives instructions to the jury on applicable law in jury trials; rules on motions, probation and contempt matters.
- \_\_\_\_\_ Keeps current on local, current events, as well as court enhancements, technologies, and alternative sentencing programs of comparable municipal courts and brings and applies innovations to the Newberg Municipal Court.
- \_\_\_\_\_ Administers oaths in an action, suit or proceeding pending before the court and in all other cases where it may be necessary in the exercise of the court’s powers or the performance of duties.
- \_\_\_\_\_ Authorizes issuance of failure to appear, failure to comply and contempt warrants.
- \_\_\_\_\_ Arraigns persons in custody, sets security amounts, reviews fines, and issues warnings.
- \_\_\_\_\_ Issues process for the arrest of any person accused of an offense against the city, commits any such person to jail or admits such person to bail pending trail, issues subpoenas, compels witnesses to appear and testify in any case before the court, compels obedience to such subpoenas, issues any process necessary to carry into effect the judgments of the court and punishes for contempt of court.
- \_\_\_\_\_ Finds defendants “guilty” or “not guilty,” “responsible” or “not responsible,” or “in violation” or “not in violation” in non-jury trial proceedings based upon evidence; imposes sentencing.
- \_\_\_\_\_ Writes opinions; stays current with municipal law changes; performs required duties.
- \_\_\_\_\_ Provides for the orderly conduct of proceedings before the court or before its officers.
- \_\_\_\_\_ Develops safe work habits and follows all safety policies, procedures, and techniques in order to contribute to safety of self, co-workers and the general public.

**Overall Rating for this Area of Responsibility:**

Criteria 2	1	2	3	4	N/O
Knowledge of Law, Legal Practices & Court Management	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement*, or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_  
\_\_\_\_\_

**3. Inter-departmental Relations. Ability to work effectively with elected officials, employees, public agencies and the general public.**

\_\_\_\_\_ Cooperates with the City Manager through the Finance Director, concerning day-to-day operations of the Court and supervision of the Court staff.

\_\_\_\_\_ Cooperates with the City Attorney concerning the legal functioning of the court while maintaining independence as to judicial decisions and responsibilities.

\_\_\_\_\_ Administers programs in conjunction with the City Attorney, Police and Court staff.

\_\_\_\_\_ Follows standards as outlined in the Employee Manual (Personnel Rules & Regulations).

**Overall Rating for this Area of Responsibility:**

Criteria 3	1	2	3	4	N/O
Interdepartmental Relations	Needs Improvement*	Developing	Full Effective	Exceeds Expectations*	No Opinion or Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement*, or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_  
\_\_\_\_\_

**4. Fiscal Planning & Goals. Ability to manage and initiate court programs in cooperation with the city attorney and court staff to secure compliance with court orders, fines, assessments, and sentences. Ability to communicate clearly and concisely, orally and in writing.**

\_\_\_\_\_ Develops and recommends to the Mayor and City Council the annual and long-range plans and goals for the court.

\_\_\_\_\_ Reports to the Mayor and City Council semiannually on the operations of the court, goals, and accomplishments.

\_\_\_\_\_ Works with the Court Administrator to establish and administer the organization, policies and priorities for the court.

**Overall Rating for this Area of Responsibility:**

Criteria 4	1	2	3	4	N/O
Fiscal Planning & Goals	Needs Improvement*	Satisfactory Performance	Excellent Performance	Exceeds Expectations*	No Opinion or Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_  
\_\_\_\_\_

**II. OVERALL EVALUATION:**

Overall Summary	1	2	3	4	N/O
	Needs Improvement*	Developing	Fully Effective	Exceeds Expectations*	No Opinion or Not Observed

**Directions:** Use the space below to record specific comments for ratings of (1) *needs improvement*, or (4) *Exceeds Expectations*.

\* Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Printed Name** \_\_\_\_\_

Exhibit "B"  
To Resolution No. 2016-3265

**CITY OF NEWBERG  
POSITION DESCRIPTION**

<b>Class Title:</b>	City Manager	<b>Salary:</b>	Contract
<b>Department:</b>	Administration	<b>FLSA Status:</b>	Exempt
<b>Location:</b>	City Hall	<b>Date:</b>	March 2016

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**SUMMARY OF DUTIES & RESPONSIBILITIES**

Performs high-level administrative, technical, and professional work in directing and supervising the administration of city government. The City Manager is responsible for preparing and administering the budget for the City of Newberg. The City Manager demonstrates knowledge of all laws, ordinances, resolutions, and orders to ensure that they are performed in good faith.

The City Manager is an appointive officer of the City as provided for in Chapter VIII, Section 34 of the Charter. This excerpt follows:

**Section 34. City Manager.**

(a) The office of City Manager is established as the administrative head of the City government. The City Manager is responsible to the Mayor and Councilors for the proper administration of all City business. The City Manager will assist the Mayor and Councilors in the development of City policies, and carry out policies established by ordinances, resolutions, and orders.

(b) A majority of the Council must appoint and may remove the manager. The appointment must be made without regard to political considerations and solely on the basis of education and experience in competencies and practices of local government management.

(c) The manager need not reside in the City or the state at the time of appointment.

(d) The manager may be appointed for a definite or an indefinite term, and may be removed at any time by a majority of the Council. The Council must fill the office by appointment as soon as practicable after the vacancy occurs.

(e) The manager must:

(1) Attend all Council meetings unless excused by the Mayor or Council;

(2) Make reports and recommendations to the Council about the needs of the City;

(3) Administer and enforce all City ordinances, resolutions, orders, franchises, leases, contracts, permits, and other City decisions;

(4) Appoint, supervise and remove City employees;

(5) Organize City departments and administrative structure;

(6) Prepare and administer the annual City budget;

(7) Administer City utilities and property;

(8) Encourage and support regional and intergovernmental cooperation;

(9) Promote cooperation among the Council, staff and citizens in developing City policies, and building a sense of community;

(10) Perform other duties as directed by the Council;

(11) Delegate duties, but remain responsible for acts of all subordinates.

(f) The manager has no authority over the Council, City Attorney, or the judicial functions of the Municipal Judge.

(g) The manager, the City Attorney, and other employees designated by the Council may sit at Council meetings but have no vote. The manager may take part in all Council discussions.

(h) When the manager is temporarily disabled from acting as manager or when the office of manager becomes vacant, the Council must appoint a manager pro tem. The manager pro tem has the authority and duties of manager, except that a pro tem manager may appoint or remove employees only with Council approval.

(i) No Council member may directly or indirectly attempt to coerce the manager or a candidate for the office of manager in the appointment or removal of any City employee, or in administrative decisions regarding City property or contracts. Violation of this prohibition is grounds for removal from office by a majority of the Council after a public hearing. In Council meetings, Councilors may discuss or suggest anything with the manager relating to City business.

### **SUPERVISION RECEIVED**

The City Manager works under the broad policy guidance of the City Council, and is subject to its direction.

### **SUPERVISION EXERCISED**

The City Manager shall exercise supervision over all municipal employees either directly or through department heads and supervisors, exclusive of the City Attorney, Legal Department staff and Municipal Judge.

### **TYPICAL EXAMPLES OF WORK**

The City Manager may perform a combination of some or all of the following duties that are a representative sample of the level of work appropriate to this position. However, these examples do not include all duties that an employee may be expected to perform, as directed by the City Council.

- Management:
  - a. Responsible for the management and supervision of all City departments, agencies, and offices with the exception of the City Attorney and his/her staff and the Municipal Judge, to achieve goals within available resources by appropriately delegating duties.
  - b. Oversees the administration of workloads and staff assignments by studying, standardizing, and determining work roles, responsibilities, and procedures to improve efficiency and effectiveness of operations; preparing work schedules to expedite workflow.
  - c. Appoints and removes all department heads and employees of the City, except for Charter positions and their employees.
  - d. Assures the training, motivation, and evaluation of City staff and directs changes as needed.
  
- Planning Goals:
  - a. Provides leadership and direction in the development of short and long-range plans with the City staff and the City Council.
  - b. Oversees the administration of plans, reviews progress, and directs changes as needed, based on new developments in technology, legislation, practices, and regulations.
  - c. Investigates, integrates, and implements technology where administratively and fiscally feasible.
  - d. Gathers, interprets, and prepares data for studies, reports, and policy recommendations.
  - e. Coordinates department activities with other departments and agencies as needed.
  
- Communications:
  - a. Provides written and oral professional advice to the City Council and department heads in a timely, clear, thorough, and concise manner.
  - b. Communicates official plans, policies, and procedures to staff, the media, and to the general public.
  - c. Presents information to councils, boards, commissions, civic groups, and to the general public.

- d. Issues clearly written and concise oral instructions to assign duties and examine work for exactness, neatness, and conformance to policies and procedures.
- e. Maintains harmony among City staff; provides direction and instruction in a constructive manner; accepts differing opinions in a positive manner; and works to resolve issues.
- Fiscal Agent/Budget Officer:
  - a. Assures that assigned areas of responsibility are performed within budget and demonstrates effective and efficient use of budgeted funds, personnel, materials, facilities, and time in compliance with federal, state and local laws.
  - b. As budget officer, performs cost control activities and monitors revenues and expenditures in all departments, to assure sound fiscal control and to encourage innovative practices.
  - c. As budget officer, prepares annual budget requests and ensures that the budget addresses the City Council's goals and objectives.
- Community Relations:
  - a. Advises and assists City staff in performing duties to adjust errors and to address complaints.
  - b. Projects a positive public image and is courteous to the public at all times.
  - c. Assures ample public promotion of City initiatives in cooperation with respective staff.
  - d. Maintain effective relations with media representatives.
  - e. Promotes cooperation among the City Council, staff, and citizens in developing policies and to build a sense of community.
- Intergovernmental Relations:
  - a. Maintains effective communication with local, regional, state, and federal government agencies.
  - b. Actively pursues financial resources (grants) from other agencies.
  - c. Contributes to good government through participation in local, regional, and state committees and organizations.
  - d. Effectively represents City programs and projects with legislators and state agencies in coordination with the City Council and Mayor.
  - e. Keeps the City Council informed of current plans and activities of administration and new developments in technology, legislation, governmental practices and regulations.

*The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.*

### **QUALIFICATIONS - EDUCATION, EXPERIENCE, AND CERTIFICATION**

A Baccalaureate degree is required, with a Master's Degree preferred, from an accredited college or university in public administration, political science, business management, or a closely related field; five (5) years of experience as a high-level director, preferably in a municipality; possession of, or the ability to obtain appropriate, recognized professional certification; must be bondable, and possess a valid state driver's license.

### **REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES**

- Extensive knowledge of modern policies and practices of public administration; working knowledge of municipal finance, human resources, public works, public safety, and community development.
- Knowledge of state laws and local ordinances, resolutions, and orders; oversees that they are faithfully performed.
- Skill in preparing and administering municipal budgets; skill in planning, directing, and administering municipal programs.

- Ability to prepare and analyze comprehensive reports; ability to carry-out assigned projects to their completion; ability to effectively communicate verbally and in writing; ability to establish and maintain effective working relationships with employees, City officials, and the public; ability to efficiently and effectively administer a municipal government.
- Demonstrate effective personal traits such as initiative, creativity, judgment, fairness, and impartiality; demonstrates respect for individuals and for City equipment and resources.
- Ability to foster a work environment that supports and encourages the investigation and implementation of innovative applications.
- Ability to deal with distraught or difficult individuals.
- Ability to attend meetings and activities outside of normal working hours.
- Ability and willingness to travel as needed and perform the duties and responsibilities.

### **PHYSICAL DEMANDS**

While performing the duties of this job, the employee is frequently required to speak or hear; sit; use hands to handle, feel or operate objects, tools, or controls; and reach with hands and arms; stand or walk for considerable distances or time. Must occasionally lift and move up to 20 pounds. Specific vision abilities include close vision, distance vision, peripheral vision, depth perception, and the ability to adjust focus.

### **WORK ENVIRONMENT**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodation will be made to meet the needs of a qualified individual with limitations who can perform the essential functions of the job. Most functions will be performed in an indoor office like setting with infrequent exposure to outside weather conditions.

### **TOOLS AND EQUIPMENT USED**

Skilled in operating standard office equipment and a computer with word processing, database, and spreadsheet software, and the ability to operate a motor vehicle.

*This position description does not constitute an employment agreement between the City Council and the employee and is subject to change by the Council as the needs of the City and requirements of the job change.*

### **SELECTION GUIDELINES**

The selection process will be set forth as determined by the City Council.

Approval by Motion on this \_\_\_\_ day of \_\_\_\_\_, 2016.

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

Signature Attest that Motion was duly passed accepting position description.

Revision History: Adopted and approved by Resolution No. 2015-3240 on November 16, 2015.

## CITY OF NEWBERG POSITION DESCRIPTION

<b>Class Title</b>	City Attorney	<b>Salary:</b>	Contract
<b>Department:</b>	Legal	<b>FLSA Status</b>	Exempt
<b>Location:</b>	City Hall	<b>Date:</b>	March 2016

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### SUMMARY OF DUTIES & RESPONSIBILITIES

Performs high-level administrative, technical, and professional work in negotiating and finding creative solutions to issues in effort of preventing potential claims and lawsuits, drafting legal documents, preparing court briefs, prosecuting crimes, responding to and conducting civil lawsuits, advising city elected officials and staff as to legal rights, limitations, and obligations; and other legal practices applicable to state, local and federal law.

The City Attorney is an appointive officer of the City as provided for in Chapter VIII, Section 35 of the Charter. This excerpt follows:

#### Section 35. City Attorney.

The office of City Attorney is established as the chief legal officer of the City government. A majority of the Council must appoint and may remove the Attorney. The Attorney must appoint and supervise, and may remove any City Attorney's office employees.

### SUPERVISION RECEIVED

The City Attorney works under the broad policy guidance of the City Council, and is subject to its direction.

### SUPERVISION EXERCISED

The City Attorney shall exercise supervision over Legal Department employees either directly or through subordinate supervisors.

### TYPICAL EXAMPLES OF WORK

The City Attorney may perform a combination of some or all of the following duties that are a representative sample of the level of work appropriate to this position. However, these examples do not include all duties that an employee may be expected to perform, as directed by the City Council. The following examples do not constitute an employment agreement between the employer and the employee and is subject to change by the employer as the needs of employer and requirements of the job change consistent with contract of employment.

- Management:
  - a. Responsible for the management and supervision of the Legal Department to achieve goals within available resources; by appropriately delegating duties.
  - b. Oversees the administration of workloads and staff assignments by studying, standardizing, and determining work roles, responsibilities, and procedures to improve efficiency and effectiveness of operations; preparing work schedules to expedite workflow.
  - c. Appoints and removes all department staff.
  - d. Assures the training, motivation, and evaluation of legal department staff and directs changes as needed.
  
- Planning Goals:
  - a. Provides leadership and direction in the development of short and long-range plans with the legal staff and City Council.

- b. Administers plans, reviews progress, and directs changes as needed, based on new developments in technology, legislation, best practices, and regulations.
  - c. Investigates, integrates, and implements technology where administratively and fiscally feasible.
  - d. Gathers, interprets, and prepares data for studies, reports, and policy recommendations.
  - e. Coordinates department activities with other departments and agencies as needed.
- Communications:
    - a. Provides written and oral professional legal advice to the City Council, City Manager, and department heads in a timely, clear, thorough, and concise manner.
    - b. Communicates official plans, policies, and procedures to legal department staff and to the public.
    - c. Presents information to councils, boards, commissions, civic groups, and to the general public.
    - d. Production of the weekly “Legal Bulletin” to the City Council.
    - e. Issues clearly written and concise oral instructions to assign duties and examine work for exactness, neatness, and conformance to policies and procedures.
    - f. Maintains harmony among Legal Department staff; provides direction and instruction in a constructive manner; accepts differing opinions in a positive manner; and, and works to resolve issues.
- Fiscal Agent:
    - a. Assures that assigned areas of responsibility are performed within budget and demonstrates effective and efficient use of budgeted funds, personnel, materials, facilities, and time.
    - b. Performs cost control activities and monitors revenues and expenditures in Legal Department, to assure sound fiscal control and to encourage innovative practices.
    - c. Prepares an annual Legal Department budget and administers their adopted budget.
- Community Relations:
    - a. Performs, and assists City staff in performing their duties in addressing issues and complaints.
    - b. Projects a positive public image and is courteous to the public at all times.
    - c. Maintain effective relations with media representatives.
    - d. To build a sense of Community, promotes cooperation among the City Council, staff, and citizens in developing policies.
- Intergovernmental/Interagency Relations:
    - a. Maintains effective communication with local, regional, state, and federal government agencies.
    - b. Provides legal advice to City staff pursuing financial resources (grants) from other agencies.
    - c. Contributes to good government through participation in local, regional, state, and professional committees and organizations.
    - d. Confers with colleagues with specialty areas of law to establish and verify basis for legal proceedings; and serves as a liaison between outside legal counsel and City officials on specialized legal issues.
- Consultative Legal Services:
    - a. Advises the City Council of current and future-focused legal trends: issues legal opinions.
    - b. Advise City officials of changes to state or federal laws affecting City operations.
    - c. Interprets laws, rulings, and regulations for City officials and staff.
    - d. Recommends for adoption by the City Council such measures deemed necessary and expedient.

- Legal Preparation:
  - a. Drafts ordinances, resolutions, contracts, agreements, deeds, leases, and franchises; reviews documents prepared by other departments, agencies, and parties.
  - b. Approves ordinances, resolutions, and contracts as to legal form; provides legal advice as to substance.
  - c. Gathers evidence in civil, criminal, and other cases to formulate defense or to initiate legal action; conducts research; interviews clients and witnesses, and handles other details in preparation for trial; prepares legal briefs, arguments and testimony; develops strategy in preparation for presentation in cases; files briefs in the appropriate court
  - d. Represents the City in court and before quasi-judicial or administrative agencies of government.

*The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.*

### **QUALIFICATIONS - EDUCATION, EXPERIENCE, AND LICENSURE**

Graduation from an accredited law school with a Juris Doctor degree in law, three (3) years of experience as a practicing attorney, a license to practice law in the state, member in good standing of the state Bar Association, and a valid state driver's license.

### **REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES**

- Extensive knowledge of state statutes relating to municipal affairs, and laws relating to the purchase of goods and services, contracting, labor, employment, land use, environment, and traffic.
- Working knowledge of modern policies and practices of municipal law and public administration.
- Knowledge of state laws and local ordinances, resolutions, and orders; ensures that they are faithfully performed.
- Skill in preparing briefs and enforcing all provisions of the City's franchises, leases, contracts, and other legal documents.
- Ability to prepare and analyze comprehensive legal reports; ability to carry-out assigned projects to their completion; ability to effectively communicate verbally and in writing; ability to establish and maintain effective working relationships with employees, City officials, the court system, and the public; ability to efficiently and effectively administer a municipal legal department.
- Demonstrate effective personal traits such as initiative, creativity, judgment, fairness, and impartiality; demonstrates respect for individuals and City's franchises, leases, and contracts.
- Ability to foster a work environment that supports and encourages the investigation and implementation of innovative applications.

### **PHYSICAL DEMANDS**

While performing the duties of this job, the employee is frequently required to talk or hear; sit; use hands to handle, feel or operate objects, tools, or controls; and reach with hands and arms; stand or walk for considerable distances or time. Must occasionally lift and move up to 25 pounds. Specific vision abilities include close vision, distance vision, peripheral vision, depth perception, and the ability to adjust focus.

### **WORK CONDITIONS**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodation will be made to meet the needs of a qualified individual with limitations who can perform the essential functions of the job.

1. Must be bondable.
2. Ability to deal with distraught or difficult individuals.

3. Ability to attend monthly staff meetings and activities outside of normal working hours.
4. Ability and willingness to travel as needed and perform the duties and responsibilities.
5. May serve as City Manager pro tem in the absence of the City Manager.

**REQUIRED TOOLS AND EQUIPMENT USED**

Skilled in operating personal computer, including word processing, database, and spreadsheet management, motor vehicle; ten-key calculator; phone; copy, scanner, and fax machine.

**SELECTION GUIDELINES**

The selection process includes a formal application; rating of education, experience, and certification; oral interview; and reference and background checks.

Approval by Motion on this \_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_

Mayor

Signature Attest that Motion was duly passed accepting position description.

Revision History: Adopted and approved April 23, 2013, via Resolution No. 2013-3079;  
Adopted and approved July 6, 2010, via Resolution No. 2010-2912

## City of Newberg Position Description

<b>Title:</b>	Municipal Court Judge	<b>Salary:</b>	Contract
<b>Department:</b>	Finance	<b>FLSA Status:</b>	Exempt
<b>Division:</b>	Municipal Court	<b>Date:</b>	March 2016

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### **SUMMARY OF DUTIES & RESPONSIBILITIES**

Performs judicial activities and oversees the judicial functions of the court, ensuring conformance with legal and departmental requirements. Works under general employment, provisions set forth by the city council. Generally, there will be an employment contract. The city council is empowered to appoint and remove the municipal judge at its discretion.

The Municipal Court Judge is an appointive officer of the city as provided for in Section 36 of the Charter. This excerpt follows:

### **Section 36 Municipal Court and Judge.**

- (a) A majority of the council may appoint and remove a municipal judge. A municipal judge will hold court in the city at such place as the council directs. The court will be known as the Municipal Court.
- (b) All proceedings of this court will conform to state laws governing justices of the peace and justice courts.
- (c) All areas within the city and areas outside the city as permitted by state law are within the territorial jurisdiction of the court.
- (d) The municipal court has jurisdiction over every offense created by city ordinance. The court may enforce forfeitures and other penalties created by such ordinances. The court also has jurisdiction under state law unless limited by city ordinance.
- (e) The municipal judge may:
  - (1) Render judgments and impose sanctions on persons and property;
  - (2) Order the arrest of anyone accused of an offense against the city;
  - (3) Commit to jail or admit to bail anyone accused of a city offense;
  - (4) Issue and compel obedience to subpoenas;
  - (5) Compel witnesses to appear and testify and jurors to serve for trials before the court;
  - (6) Penalize contempt of court;
  - (7) Issue processes necessary to enforce judgments and orders of the court;
  - (8) Issue search warrants; and
  - (9) Perform other judicial and quasi-judicial functions assigned by ordinance.
- (f) The council may appoint and may remove municipal judges pro tem.
- (g) The council may transfer some or all of the functions of the municipal court to an appropriate state court.

### **SUPERVISION RECEIVED:**

The judge functions pursuant to direction of the city council. The mayor is the official contact person. The judge operates independently as to judicial decisions, responsibilities and functions.

### **SUPERVISION EXERCISED:**

The Judge shall exercise supervision over the court personnel concerning their in-court and municipal court responsibilities. The day-to-day job supervision and evaluation of the court personnel shall be the

responsibility of the Finance Director. The supervision and evaluation of the Bailiff shall be the responsibility of a designee of the Police Department. The Judge will consult and cooperate with the Finance Director concerning all aspects of the operation of the court and court personnel. The hiring and termination of court personnel shall be done following City personnel procedures for employees who are responsible to the City Manager. The day-to-day supervision, the responsibility for budgeting, and evaluation of court personnel may be reassigned or reorganized by the City Manager.

### **SUPERVISION RECEIVED**

The Municipal Judge works under the broad guidance of the City Council and is a position designated by Charter.

The Finance Director is responsible for preparing and auditing the Municipal Court annual budget.

### **SUPERVISION EXERCISED**

Court support staff take direction from the Municipal Judge while Court is in session. The Court Administrator is supervised by the Finance Director; the Court Administrator supervises the Court Clerk. A Police Department designee provides supervision to the Bailiff.

### **TYPICAL EXAMPLES OF WORK**

The Municipal Court Judge may perform a combination of some or all of the following duties which are a representative sample of the level of work appropriate to this position. However, these examples do not include all the specific tasks that an employee may be expected to perform.

- Presides over trials and renders judgments for misdemeanor crimes, traffic violations, violations of City Codes and any other cases within the jurisdiction of the municipal court.
- Presides over pretrial conferences, arraignments, motion hearings, traffic hearings, jury and non-jury trials and various other court matters as required for the city.
- Finds defendants “guilty” or “not guilty,” “responsible” or “not responsible,” or “in violation” or “not in violation” in non-jury trial proceedings based upon evidence and imposes sentencing as required.
- Authorizes issuance of failure to appear, failure to comply and contempt warrants.
- Arraigns persons in custody, sets security amounts, reviews fines, and issues warnings.
- Evaluates cases with defendants and their attorneys.
- Provides information to attorneys and citizens regarding warrants, appeals and hearing dates and locations.
- Administers programs in conjunction with the city attorney, police and court staff.
- Works with the court administrator to establish and administer the organization, policies and priorities for the court.
- Develops and recommends to the mayor and city council the annual and long-range plans and goals for the court.
- Reports to the mayor and city council semiannually on the operations of the court, goals, and accomplishments.
- Writes opinions; stays current with municipal law and changes; performs related duties as required.
- Provides for the orderly conduct of proceedings before the court or before its officers.
- Administers oaths in an action, suit or proceeding pending before the court and in all other cases where it may be necessary in the exercise of the court’s powers or the performance of duties.
- Issues process for the arrest of any person accused of an offense against the city, commits any such person to jail or admits such person to bail pending trial, issues subpoenas, compels witnesses to appear and testify in any case before the court, compels obedience to such subpoenas, issues any process necessary to carry into effect the judgments of the court and punishes for contempt of court.
- Cooperates with the City Manager through the Finance Director, concerning day-to-day operations of the court and supervision of the court staff.
- Cooperates with the City Attorney concerning the legal functioning of the court while maintaining independence as to judicial decisions and responsibilities.

- Presides at arraignment and trial of persons charged with violating municipal codes; deliberates on and decides cases tried before the court without a jury; conducts legal research on cases before the court; prepares and gives instructions to the jury on applicable law in jury trials; rules on motions, probation and contempt matters.
- Establishes policies regarding security, fines, and the entry and docketing of judgments and other matters touching the conduct of proceedings in the court; identifies cases which may be processed by the clerk of the court for individuals who do not desire a formal court appearance; issues warrants as required.
- Follow standards as outlined in the Employee Manual (Personnel Rules & Regulations).
- Produces an acceptable quantity and quality of work that is completed within established timelines.
- Develops safe work habits and follows all required safety policies, procedures and techniques in order to contribute to safety of self, co-workers and the general public.
- Keeps current on local, current events, as well as court enhancements, technologies, and alternative sentencing programs of comparable municipal courts and brings and applies innovations to the Newberg Municipal Court.

*The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.*

#### **QUALIFICATIONS - EDUCATION / LICENSE REQUIREMENTS**

Juris Doctor Law degree and a minimum of five (5) years' experience in the area of municipal law, trial experience or as an administrative hearings officer, arbitrator or judge; or any equivalent combination of experience and training that demonstrates the knowledge, skill and abilities described above. Member in good standing with the Oregon State Bar. Possession of a valid Driver License and have proper insurance if required to drive for work-related activities.

#### **REQUIRED KNOWLEDGE AND SKILLS**

- Expert knowledge of law and general legal principles and practices, including alternative sentencing practices.
- Knowledge of local ordinances and codes.
- High-level knowledge of state and constitutional laws specifically relating to traffic regulations, violations and misdemeanors.
- Ability to analyze and appraise case facts, rules of evidence and jurisdiction.
- Ability to maintain judicial impartiality and judicial temperament in cases.
- Ability to maintain a non-discriminatory attitude and behavior regarding, but not limited to, race/ethnicity, religion, sex, age, disability and sexual orientation.
- Ability to communicate clearly and concisely, orally and in writing.
- Ability to work effectively with elected officials, employees, public agencies and the general public.
- Ability to manage court environment to ensure individuals are heard and respected; to maintain an appearance of independence; and to maintain a professional court appearance.
- Ability to manage and initiate court programs in cooperation with the city attorney and court staff to secure compliance with court orders, fines, assessments, and sentences.

#### **PHYSICAL DEMANDS**

While performing the duties of this job, the employee is frequently required to talk or hear; sit; use hands to handle, feel or operate objects, tools, or controls; and reach with hands and arms; stand or walk for considerable distances or time. Must occasionally lift and/or move up to 25 pounds. Specific vision abilities include close vision, distance vision, peripheral vision, depth perception, and the ability to adjust focus.

**WORK CONDITIONS**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodation will be made to meet the needs of a qualified individual with limitations who can perform the essential functions of the job.

1. Deals with distraught or difficult individuals.
2. Ability to attend monthly staff meetings and/or activities outside of normal working hours.
3. Ability and willingness to travel as needed and perform judicial services for jury trials, jail arraignments, and handle time-sensitive matters outside of normal court hours.
4. Available for the issuance of warrants during non-court hours.

**TOOLS AND EQUIPMENT USED**

Personal computer, including word processing, database, and spreadsheet management, motor vehicle; ten-key calculator; phone; copy, scanner, and fax machine.

*This position description does not constitute an employment agreement between the City Council and the employee and is subject to change by the Council as the needs of the City and requirements of the job change.*

Approval by Motion on this \_\_\_\_ day of \_\_\_\_\_, 2016.

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

Signature Attest that Motion was duly passed accepting position description.

Revision History: Adopted and approved January 4, 2010 with an Effective Date of February 1, 2010, via Resolution No. 2010-2884.

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: April 4, 2016**

**Order \_\_\_      Ordinance \_\_\_      Resolution XX      Motion \_\_\_      Information \_\_\_**  
**No.                      No.                      No. 2016-3282**

**SUBJECT: A Resolution Suspending The Fire Fee Authorized By Resolution No. 2004-2509 From July 1, 2016 Until Further Action By The Council**

**Contact Person (Preparer) for this Motion: Steve Rhodes CMPT/Truman Stone CA  
Dept.: Admin/Legal  
File No.:**

**RECOMMENDATION:**

Adopt Resolution No. 2016-3282. Suspending the Fire Fee authorized by Resolution No. 2004-2509 for the period July 1, 2016 until reinstated by the Council.

**EXECUTIVE SUMMARY:**

Since 1991 the City has charged a fire equipment fee to all in-city utility customers. The current version of the fee was authorized by resolution of the Council, Resolution No. 2004-2509. Residential customers pay \$1.50 per month. Funds collected are used as a reserve fund for continuous replacement of apparatus and equipment.

The City has entered into an IGA with Tualatin Valley Fire & Rescue (TVFR) for provision of fire and emergency medical services, effective July 1, 2016. Under the terms of the agreement, replacement apparatus required within the City during the term of this Agreement will be provided by the TVFR. The term of the IGA is July 1, 2016 until June 30, 2018, with provisions for extension of the term by the parties.

During the term of the IGA, the parties will pursue annexation into the TVFR District. If annexation does not occur, the City will resume operation of the Fire Department and it is anticipated that the fire fee will be reinstated. If annexation occurs, it is anticipated that the Council will consider whether there exists a reason to continue or repeal the fee.

**FISCAL IMPACT:**

Revenue from the fee in 2015 – 16 fiscal year was \$146,000.



## RESOLUTION No. 2016-3282

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**A RESOLUTION SUSPENDING THE FIRE FEE AUTHORIZED BY  
RESOLUTION NO. 2004-2509 FROM JULY 1, 2016 UNTIL FURTHER  
ACTION BY THE COUNCIL**

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### RECITALS:

1. The City Council determined that it is in the best interest of the City to attach a fee to in-City customer municipal service statements as an efficient way to collect sufficient funds to replace Fire Department rolling stock and rescue equipment.
2. Since 1991 the City has been collecting a fire truck/equipment fee. The current version of this fee was adopted through Resolution No. 2004-2509, which imposes a fee based on water meter size. Residential customers pay \$1.50 per month.
3. The City has entered into an IGA with Tualatin Valley Fire and Rescue (TVFR) for provision of fire and emergency medical services, effective July 1, 2016. That IGA requires TVFR to provide replacement apparatus required within the City during the term of the agreement.
4. The City Manager recommends suspension of collection of the fire equipment fee during the pendency of the IGA with TVFR, specifically from July 1, 2016 through June 30, 2018, or any extension specified in the agreement.
5. By adoption of this Resolution, reinstatement of the fire fee will require future council action.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Collection of the fire fee established by Resolution No. 2004-2509 shall be suspended from July 1, 2016 until further resolution of the Council.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: April 5, 2016.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Sue Ryan, City Recorder

**ATTEST** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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