

## ORDINANCE No. 2009-2711

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AN ORDINANCE AMENDING THE MUNICIPAL CODE TO REQUIRE AN ECONOMIC IMPACT ASSESSMENT REPORT AND TO AMEND THE DEVELOPMENT CODE TO REQUIRE AN ABANDONED BUILDING SURETY AGREEMENT, AND ENVIRONMENTALLY BENEFICIAL BUILDING AND DESIGN PRACTICES FOR LARGE SCALE RETAIL DEVELOPMENT SITES

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### RECITALS:

1. Due to the typical scale, site design, and traffic generation large-scale retail developments can have a negative effect on the local environment. Large scale development can disproportionately affect local air quality and temperature, storm water quality, energy supply, waste system, water supply, and natural resources.
2. Vacant large-scale retail development sites can be neglected and become visually unpleasing. Vacant and visually unpleasing sites can be attractive for criminal activity and have negative economic effects on surrounding businesses.
3. Large-scale retail developments can have a negative effect on local municipal finances due to their proportionally greater use of police and emergency services, transportation infrastructure, and the wastewater, storm water, and water systems.
4. Requiring mitigation measures will reduce the negative environmental and economic effects on the natural environment, municipal finances, and local economy.

### THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. § 151.196, Additional Requirements for Development in the C-2 Zoning District, of the Newberg Development Code is amended as follows:

(10) Vacancy agreement. All large scale retail development sites as defined in § 151.196 (H) shall have an abandoned building surety agreement filed with the City. The purpose of the agreement is to ensure a continued attractive business environment in case a building goes vacant. The agreement shall provide measures to maintain the on-site landscaping and exterior of the buildings to their pre-vacancy condition, and to assist in finding a future tenant. Vacancy is defined as a period exceeding one year without legal occupancy. The terms of the agreement shall include:

- a. A surety bond equal to one percent of the total valuation of the buildings on-site.
- b. If the owner fails to maintain the physical exterior of the property or any building on-site the bond may be used for items including, but not limited to: landscape maintenance, exterior building repairs, parking lot paving, amenities in the public right of way

(lighting, benches, landscaping, etc.). If the cost of maintenance exceeds the amount of the bond, the City will bill the owner. Any unpaid amounts will become a lien on the property.

- c. If the owner fails to legally occupy the site the bond may be used as an incentive for prospective tenants including, but not limited to: payment of permit fees, application fees, system development charges, funding for on-site landscaping, and façade improvements.
- d. If the surety bond is expended in any amount, the owner shall provide a new surety bond prior to occupancy by a new tenant. The amount of the bond shall be equal to one percent of the value of the building at the time of occupancy.
- e. If at any time prior to one year vacancy, the Director finds the property is in need of maintenance, the Director shall notify the owner in writing of the need to maintain the property and the intent to use the bond. Unless the owner provides the needed maintenance or objects within 30 days of the notice, the surety may be used to maintain the property. If the owner objects, the City Council will hear the matter and determine whether the surety will be used.

(11) *Environmental Impact.* All new large scale retail development as defined in § 151.196 (H) shall be LEED Certified as defined by the U.S. Green Building Council. The terms of approval are as follows:

- a. The applicant shall demonstrate to the Director the extent to which the applicant has complied with the commitment to earn a LEED New Construction Certification rating for a completed project. Demonstration of LEED Certification shall be completed prior to the issuance of final Certificate of Occupancy for the new structure by submitting a report analyzing the extent credits earned toward such rating from the U.S.Green Building Council or another independent entity approved by the Director.
- b. With specific regard to the LEED Stormwater Design category, all buildings shall obtain a total of at least two points in this category.
- c. With specific regard to the LEED Water Efficiency category, all buildings shall obtain a total of at least one point in this category.
- d. In this section the term "Leadership in Energy and Environmental Design (LEED)" means a green building rating system promulgated by the United States Green Building Council (USGBC) that provides specific principles and practices, some mandatory but the majority discretionary, that may be applied during the design, construction, and operation phases, which enable the building to be awarded points from reaching present standards of environmental efficiency so that it may achieve LEED certification from the USGBC as a "green" building, as such rating system exists on January, 1, 2009.
- e. The USGBC intends to release a revised version of the LEED Green Building Rating System every three years; and the Director shall refer to the most current version of the LEED when reviewing a new building construction permit project or renovation.

- f. The LEED Existing Building rating system shall be used during retrofit projects of existing structures.

2. Title 11, Business Regulations, of the Newberg Municipal Code is amended as follows:

Chapter 116. Economic Impact Assessment for Large Scale Retail

116.01. Statement of purpose: The city finds that large scale retail development can have adverse impacts on a local economy such as creating a net loss of employment or wages, or exporting dollars from the local area. An economic impact assessment report assists the city to identify any adverse economic impacts and subsequently require mitigation measures for a proposed large scale retail development. It is intended as a tool to ensure that new businesses, in conjunction with existing businesses, provide long term net benefits for the local economy.

116.02. Applicability of requirements: An economic impact assessment report shall be submitted to the Director for all proposed development that meets the following criteria:

- a. New large scale retail over 30,000 square feet gross floor area or 50,000 square feet cumulative gross floor area.
- b. Expansions of large scale retail requiring a Type II or Type III design review.
- c. New tenants to existing large scale retail.

116.03. Process: An economic impact assessment report shall be conducted by an independent consultant chosen at the discretion of the Director. The report shall be paid for by the applicant. The report shall be submitted to the Director for review prior to issuance of a building permit for any large scale retail project, or prior to occupancy for any project not requiring a building permit. If the Director finds that the report meets the criteria in § 116.04 a determination of no adverse economic impact is found. If the Director finds that the criteria have not been met a public hearing will be held by the Planning Commission to review the report and make a determination based on the criteria.

116.04. Contents of report: The economic impact assessment report shall include the following information:

The anticipated fiscal impact on municipal services, including police, fire, road maintenance, and stormwater, waste water, and water services.

116.05. No adverse impact criteria: In order to have a finding of no significant adverse impact, the report must show the following criteria are met:

The proposed development will not have an adverse fiscal impact on municipal services, including police, fire, road maintenance, and stormwater, sewer, and water services.

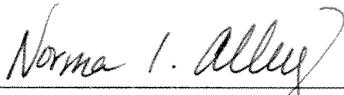
116.06. Mitigation. If the report finds any of the criteria in section 116.04 are not met, the Planning Commission can require mitigation. Conditions may include, but are not limited to:

- a. Requiring additional payment for municipal services.
- b. Installing or upgrading utility services, such as stormwater detention facilities.
- c. Providing additional transportation facilities, such as sidewalks, traffic signals, bus stops, turn lanes, and street widening.

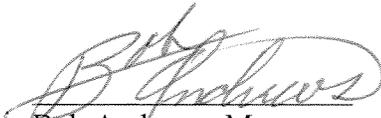
3. The findings in Exhibit "A" are hereby adopted.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: April 15, 2009.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 16th day of March, 2009, by the following votes: **AYE: 7      NAY: 0      ABSENT: 0      ABSTAIN: 0**

  
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Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 19th day of March, 2009.

  
Bob Andrews, Mayor

Exhibits:  
"A" Findings

### **LEGISLATIVE HISTORY**

By and through the following:

- January 8, 2009 Planning Commission Public Hearing
- September 25, 2008 Planning Commission Workshop
- September 11, 2008 Planning Commission Workshop
- June 2, 2008 City Council Public Hearing
- April 21, 2008 City Council Workshop
- January 22, 2008 City Council Workshop
- November 8, 2007 Planning Commission Public Hearing
- October 11, 2007 Planning Commission Workshop
- April 12, 2007 Planning Commission Workshop

**Exhibit A Findings  
Ordinance 2009-2711**

**Comprehensive Plan Policy J.1.3.** *Developments should respect the natural ground cover of their sites to the extent possible and plans should be made to preserve existing mature, non-hazardous trees in healthy condition.*

**Comprehensive Plan Policy M.1.a.** *The City will encourage energy-efficient development patterns. Such patterns shall include the mixture of compatible land uses and a compactness of urban development.*

**Comprehensive Plan Policy E.1.** *Development shall not exceed the carrying capacity of the air, water or land resource base.*

**Comprehensive Plan Policy E.2.** *Water quality in the Willamette River and tributary streams shall be protected.*

**Comprehensive Plan Policy E.4.** *The Newberg airshed shall be protected from excessive pollution levels resulting from urbanization.*

**Comprehensive Plan Policy E.11.** *The City will continue to encourage and support the three R's of recycling (re-use, reduction and recycling).*

**Comprehensive Plan Policy H.1.d.** *The City shall encourage the development of industries which represent the most efficient use of existing resources including land, air, water, energy and labor.*

**Finding:** The above policies are intended to ensure a high level of local environmental quality. The proposed amendments help to ensure that the built environment has a limited degree of impact on the natural environment.

**Comprehensive Plan Policy F.9.** *The City will seek abatement of the aesthetic degradation of the environment resulting from blighted neighborhoods, indiscriminate waste disposal, offensive outdoor storage.*

**Comprehensive Plan Section J. Urban Design, Goal 1:** *To maintain and improve the natural beauty and visual character of the City.*

**Comprehensive Plan Policy J.1.c.** *Non-residential uses abutting residential areas should be subject to special development standards in terms of setbacks, landscaping, sign regulations, building heights and designs.*

**Comprehensive Plan Policy J.1.g.** *Community appearance should continue to be a major concern and subject of a major effort in the area. Street tree planting, landscaping, sign regulations and building improvements contribute to community appearance and should continue to be a major design concern and improvement effort.*

**Comprehensive Plan Policy J.3.a.** *Where commercial development is permitted, such*

*development should be subject to design requirements for ingress and egress, landscaping and sign control.*

**Comprehensive Plan Policy J.4.a.** *The City will require buffering and landscaping to minimize impacts between housing and potentially conflicting uses.*

**Comprehensive Plan Policy K.8.a.** *Adopt transportation and land use design standards that emphasize visual and aesthetic quality.*

**Finding:** The above policies stress maintaining the aesthetics of the community. The proposed amendments achieve these goals by requiring that vacant buildings and landscaping on development sites are maintained to pre-vacancy conditions.

***NEWBERG DEVELOPMENT CODE § 151.205 DESCRIPTION AND PURPOSE.***

- (A) *It is recognized that certain types of uses require special consideration prior to their being permitted in a particular district. The reasons for requiring such special consideration involves, among other things, the size of the area required for the full development of such uses, the nature of the traffic problems incidental to operation of the use, the effect such uses have on any adjoining land uses and on the growth and development of the community as a whole.*
- (B) *All uses permitted conditionally are declared to be possessing such unique and special characteristics as to make impractical their being included as out-right uses in any of the various districts herein defined. The authority for the location and operation thereof shall be subject to review and the issuance of a conditional use permit. The purpose of review shall be to determine that the characteristics of any such use shall be reasonably compatible with the type of uses permitted in surrounding areas, and for the further purpose of stipulating such conditions as may be reasonable so that the basic purposes of this code shall be served. Nothing construed herein shall be deemed to require the hearing body to grant a conditional use permit.*

**Finding:** Very large retail buildings possess a number of unique characteristics that warrant special review. The buildings are much larger, posing much greater aesthetic and economic presences in the community. They generate large volumes of traffic, noise, lighting, debris, and so forth in a concentrated area. Each development is unique and can have varied impacts on the community. Because of this, it is appropriate to require conditional use permits prior to construction of any such uses. Under conditional use review, additional conditions may be added to address specific issues.

**Findings:** The vacancy agreement will ensure that the on-site landscaping and exterior of the building will be maintained and not become an eyesore to the community. The agreement will also provide funds to assist prospective tenants to occupy the site, and subsequently bring the site in conformance with Development Code requirements.

**Findings:** The City currently does not have Municipal Code requirements regarding the economic impact of a prospective business. This text amendment will ensure that the local municipal budget is not burdened by new large scale retail development.