



ORDINANCE No. 2021-2879

**AN ORDINANCE ESTABLISHING A VERTICAL HOUSING
DEVELOPMENT ZONE AND CREATING CHAPTER 3.50 IN THE
NEWBERG MUNICIPAL CODE**

RECITALS:

1. On February 4, 2019 the City Council adopted Resolution No. 2019-3529, which directed City Staff to begin work on a Vertical Housing Development Zone (VHDZ).
2. On May 9, 2019 the Planning Commission held a public workshop to consider amending Title 3 Revenue and Finance creating a Vertical Housing Development Zone.
3. On August 27, 2019 Tualatin Valley Fire and Rescue passed Resolution 2019-06 supporting the development of a VHDZ.
4. Between October 2020 and February 2021, City Staff presented the proposed VHDZ to all taxing districts, with the exception of the Newberg City Council.
5. An Opt-in/Opt-out letter was sent to all taxing districts on February 9, 2021.
6. All taxing districts voted to opt-in to Newberg's VHDZ.
7. On April 8, 2021 the City of Newberg Planning Commission considered the proposed VHDZ, took public comment, deliberated and recommended to the City Council that they approve the proposed VHDZ.
8. On April 27, 2021 the City of Newberg Affordable Housing Commission considered the proposed VHDZ, deliberated and recommended to the City Council that they approve the VHDZ.
9. After proper notice, the Newberg City Council held a public hearing on May 17, 2021, considered public testimony, and deliberated. They found that creating Chapter 3.50 Vertical Housing Development Zones to be in the best interests of the City.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. A new chapter adopting a Vertical Housing Development Zone 3.50, is added and made part of Title 3 Revenue and Finance, of the Newberg Municipal Code as set forth in Exhibit "A" to this ordinance.
2. This recommendation is based on the findings shown in Exhibit "B".

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3. Exhibit "A" Chapter 3.50 Vertical Housing Development Zone and Exhibit "B" are hereby adopted and by this reference incorporated.

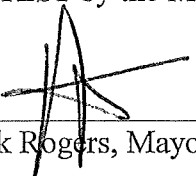
➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: June 16, 2021.

ADOPTED by the City Council of the City of Newberg, Oregon, this 17th day of May, 2021, by the following votes: **AYE: 7 NAY: 0 ABSENT: 0 ABSTAIN: 0**



Sue Ryan, City Recorder

ATTEST by the Mayor this 20th day of May, 2021.



Rick Rogers, Mayor

List of Exhibits to Ordinance No. 2021-2879
Exhibit "A": Vertical Housing Development Zone 3.50
Exhibit "B": Findings

**Exhibit “A”: Municipal Code Chapter 3.50 Vertical Housing Development
Zone - File GEN19-0006**

Section 1. Chapter 3.50 is added to read:

VERTICAL HOUSING DEVELOPMENT ZONES

Sections:

3.50.010 Purpose

3.50.020 Definitions

3.50.030 Administration and Enforcement

3.50.040 Zone Designation

3.50.050 Notification of Local Taxing Districts

3.50.060 Notice to County Assessor

3.50.070 Zone Termination or Modification

3.50.080 Municipally Sponsored Development Projects

3.50.090 Project Certification Applications

3.50.100 Project Criteria

3.50.110 City Certification of Projects

3.50.120 Project Monitoring Fee—Modification or Transfer of Ownership

3.50.130 Partial Property Tax Exemptions for Certified Projects

3.50.140 Monitoring—Investigations—Remedies—Decertification’s

3.50.150 Waiver

3.50.010 Purpose

The 2017 State Legislature gave administration of Vertical Housing Development Zones (VHDZs) to cities and counties with the passage of Senate Bill 310. The bill lays out more standards to address equity and prescribe a broad implementation outline for cities and counties. Ultimately, cities and counties have the authority to administer the program differently than the Oregon Department of Housing and Community Services, however the law is specific about certain aspects of zone creation and project approval. New zones may be created and administered by the City or county in which it lies.

3.50.020 Definitions

The following definitions apply unless inconsistent with the context:

“Area Median Income” means the area median income, accounting for family size, for the City of Newberg as defined by the United States Department of Housing and Urban Development as adjusted and published periodically.

“Certified Project or Project” means a multi-story development within a VHDZ that the City certifies as a vertical housing development project qualifying for a vertical housing partial property tax exemption under this chapter based on a proposal and description from a project applicant that conforms to City requirements.

“Construction” means the development of land and the new construction of improvements to land as further described in this chapter.

“County Assessor” means the Yamhill County assessor.

“City” means the City of Newberg.

“Director” means the Community Development Director or someone within the City authorized to act on behalf of the director for purposes of the program.

“Displacement” means a situation in which a household is forced to move from its current residence due to conditions that affect the residence or the immediate surroundings of the residence and that:

1. A reasonable person would consider to be beyond the household’s ability to prevent or control;
2. Occur despite the household’s having met all previously imposed conditions of occupancy; and
3. Make continued occupancy of the residence by the household unaffordable, hazardous, or impossible.

“District” means a local taxing district.

“Equalized Floor” means the quotient that results from the division of the total square footage of a certified project, excluding the uses listed below, by the number of actual floors of the non-ancillary improvements of the project that are at least 500 square feet per floor unless the City, in its discretion, increases the minimum square footage or otherwise qualifies the actual floors of a project eligible to be used as a divisor in determining the equalized floor quotient. Factors that the City may consider in determining whether or not to increase the square footage minimum or to impose other conditions for a qualifying divisor floor include, but are not limited to, the following:

1. The proximity of the actual floor under consideration to other floors in the project;
2. The extent of construction or rehabilitation on the actual floor under consideration;
3. The use intended for the actual floor under consideration;

4. The availability of the actual floor under consideration for use by prospective project tenants;

5. Patios, porches, and parking will not be included by the City in the determination of equalized floors. The City may include any or all of such space in its determination of equalized floors if it concludes that such space is critical for the viability of the project.

Factors that the City may consider in reaching such a conclusion include, but are not limited to, the following:

- a. The effect of such spaces upon the economic viability of the project;
- b. The degree to which such spaces are integral to the habitability of residential housing in the project;
- c. The benefit of such spaces with respect to the revitalization of the community in which the project is located; and
- d. The degree to which inclusion of such spaces modifies the calculation of equalized floors.

“Low-Income Residential Housing” means housing that is restricted to occupancy by persons or families whose initial income at occupancy is no greater than 80 percent of the Area Median Income.

“Non-Residential Areas” square footage within a certified project used other than primarily for residential use or as common areas available for residential use.

“Project Applicant” means an owner of property or their designee (e.g., a prospective developer) within a VHDZ, who applies in a manner consistent with this chapter, to have any or all such property approved by the City as a certified project.

“Rehabilitation” means repair or replacement of improvements, including fixtures, or land developments, the cost of which equals at least 20 percent of the real market value of the improvements or land developments being repaired or replaced. In determining whether or not a repair or replacement of improvements qualifies as a rehabilitation under this chapter, the City may consider factors including, but not limited to:

1. The quality and adequacy of design, materials, and workmanship;
2. The quantity of rehabilitation in proportion to the total cost of the project and between the area devoted to residential use and area devoted to non-residential use;
3. The distribution of rehabilitation throughout the project, including as it relates to the habitability of residential areas, and particularly low-income residential housing areas; and
4. The value of the improvements on a project. The value of the improvements must be at least 20 percent of the real market value of the entire project on the last certified assessment roll before the City, in consideration of other factors, will deem rehabilitation to be “substantial” in nature.

“Residential Use” means regular, sustained occupancy of a residential unit in the project by a person or family as the person’s or family’s primary residence, including residential units used primarily for transitional housing purposes, but not units and related areas used primarily as:

1. Lodging, transient, or temporary accommodations; or
2. Nursing homes, hospital-type in-patient facilities or other living arrangements, even of an enduring nature, where the character of the environment is predominately care-oriented rather than solely residential.

“Vertical Housing Development or Project” means the construction or rehabilitation of a multiple-story building, or a group of buildings, including at least one multiple-story building, so that a portion of the project is reserved for residential uses and a portion of the project is reserved for use as non-residential areas.

“Vertical Housing Development Zone or VHDZ or Zone” means an area that has been and remains designated by the City as a vertical housing development zone or an area that was officially designated by the state of Oregon as a vertical housing development zone and which remains so designated.

3.50.030 Administration and Enforcement

The director or designee is responsible for the implementation, administration, and enforcement of this chapter. The director may adopt such policies and procedures as are necessary to efficiently and effectively carry out that responsibility, consistent with the provisions of this chapter.

3.50.040 Zone Designation

- A. The City may designate an area within the City as a VHDZ.
- B. Before designating a VHDZ, the City must notify the local taxing districts that have territory in the proposed VHDZ of the City’s intention to designate a VHDZ pursuant to the requirements of Section 3.50.050.
- C. A local taxing district may elect not to participate in a VHDZ. A local taxing district that elects not to participate may continue to impose taxes on property otherwise exempt from ad valorem property tax under ORS 307.864.
- D. The City must consider the potential for displacement of households within a proposed VHDZ before designating the zone.
- E. The City may designate a VHDZ by ordinance or resolution. The ordinance or resolution may not be adopted sooner than 60 days after sending the notice required by subsection B above. The ordinance or resolution shall:
 1. Contain a description of the area sought to be designated as a VHDZ, including proposed zone boundaries. See Appendix A, Map 1 VHDZ;

2. Contain a statement attesting that the notification described in subsection B was sent by regular mail to each local taxing district listed pursuant to Section 3.50.050(A)(1), below;

3. Contain a list of the local taxing districts that elected not to participate in the VHDZ.

F. Once designated, a VHDZ shall continue to exist indefinitely, except as provided otherwise in this chapter.

G. The City may approve multiple VHDZs within its jurisdiction.

H. The boundaries of VHDZs may not overlap. A property may only be in one VHDZ.

3.50.050 Notification of local taxing districts

A. Prior to adoption of a resolution designating a VHDZ the City shall:

1. Prepare a list of local taxing districts that have territory in the proposed VHDZ.

2. By regular mail, send a notice to the local taxing districts listed pursuant to subsection (A)(1) of this section that must:

a. Describe the proposed VHDZ;

b. Explain the exemption described in ORS 307.864 that would apply if the proposed zone is designated; and

c. Explain the process by which a local taxing district may elect not to participate in the VHDZ.

B. To elect not to participate in a VHDZ, a district shall, within 30 days after the date on which proper written notification is received by the district from the City:

1. Inform the City in writing of its decision to opt out of the VHDZ designation; and

2. Provide the City with a copy of a resolution or other appropriate official instrument duly adopted and issued by the governing body of the district affirming its decision to opt out of the VHDZ designation.

C. A district that fails to respond according to subsection B will be subject to the VHDZ designation and excluded from being listed as described in subsection C.

D. A district that forms after the approval of a VHDZ may opt out of participating in a VHDZ. To opt out, the district must provide:

1. Written notice post-marked to the county assessor and the City on or before July 1 of the first tax year in which it would impose a tax on the project; and

2. A copy of a resolution or other appropriate official instrument duly adopted and issued by the governing body of the district affirming its decision to opt out of the VHDZ designation.

E. The decision by a district to opt out of a VHDZ will be effective for the tax year that begins on the July 1, after notification to the county assessor by the City pursuant to Section 3.50.050(A), or by a new district pursuant to subsection D.

3.50.060 Notice to County Assessor

A. The City will send a copy of any designation of a VHDZ to the Department of Revenue and to the county assessor's office. The City will include with the notification to the county assessor:

1. Copies of materials delineating the area of the VHDZ; and
2. The name of any district that opted out of the VHDZ.

3.50.070 Zone Termination or Modification

A. The City may terminate all or part of the VHDZ at any time. Any such termination determination will not affect existing certified projects and is not subject to administrative or judicial review.

B. The City may approve a certified project after VHDZ termination if the application for certification of the project was pending with the City prior to the City terminating the VHDZ.

C. The City will send notice of its termination of a VHDZ to any pending applicant, the county assessor, and owners of certified projects, of whom the City is aware.

D. Subsequent VHDZs may include areas from a terminated VHDZ. A new VHDZ may be designated, or an existing VHDZ expanded or reduced, so that there is no discontinuance of a VHDZ designation for any areas where the VHDZ designation is intended to endure.

3.50.080 Municipally Sponsored Development Projects

A. The City may acquire or dispose of real property located in a VHDZ for the purpose of developing projects. Property acquired by the City within a VHDZ may be sold by the City at real market value or, if it will prudently encourage the development of a project, at a lesser value. This authority is in addition and without prejudice to any authority by the City that otherwise exists under the laws of this state or an act of this City to acquire or dispose of property.

B. Development of projects may be undertaken by the City, jointly or in partnership with a private person or entity.

C. Development of projects also may be undertaken by private persons or entities acting independently of the City ownership.

3.50.090 Project Certification Applications

A. A project applicant may file an application for certification of a project by completing the vertical housing project application form, as prescribed by and available from the City, and by delivering it during normal business hours or by mail to: City of Newberg, Community Development Department, 414 E First Street, Newberg, OR 97132.

B. Projects must be described in terms of entire tax lots. Projects may not include partial tax lots.

C. To be for 'residential use' or for 'non-residential use' does not mean that a building floor is actually being occupied accordingly, but rather that it is constructed for such use and is not converted or occupied for a contrary use.

D. Low-income residential housing floors or units must be set-aside as such for the entire tax year and occupied only by people who are income eligible in order for the project to qualify for the low income vertical housing exemptions on land.

E. The non-residential use of a particular floor or floors may be satisfied even if the entire floor is not devoted to that use.

F. The City will review applications upon their appropriate delivery, subject to:

1. Applications being complete and consistent with City requirements; and
2. Delivery to the City of appropriate fees.

a. In determining fees for each project applicant, the City may consider factors including, but not limited to, known and expected costs in processing the application, effecting appropriate monitoring of the project and otherwise administering the program with respect to the project.

b. The fees authorized by this subsection may be established by resolution of the City council. Payment of fees may be made by check or money order payable to the City and must be submitted along with the project application or as otherwise required by the City.

G. For new construction projects to qualify for certification, the application must be delivered to the City before the relevant permitting authority has issued a permanent certificate of occupancy for the completed building(s).

H. For rehabilitation projects to qualify for certification, the application must be delivered to the City at any stage during rehabilitation. However, the City may provide a preliminary certification of the project pending completion of the rehabilitation of the project. Notification of the project's completion, together with appropriate documentation of the actual costs of the rehabilitation and the real market value of the pre-rehabilitated project must be forwarded by the project applicant to the City within 90 days of project completion. The City may certify all or part of a rehabilitated project or of a project where the rehabilitation is still in progress as a certified project.

I. For rehabilitation projects to qualify for certification, the application must be delivered to the City before the final building inspection.

J. Project applicants must provide the following information in a manner satisfactory to the City:

1. The address and boundaries of the proposed project including the tax lot numbers, a legible and scaled site plan of the proposed project, and a legal description of the land involved in the project for which a partial tax exemption is sought by the project applicant;

2. A description of the existing condition of the proposed project property;

3. A description of the proposed project construction or rehabilitation, including, but not limited to:

a. The design of the project,

b. The architectural plans that include verifiable square footage measurements,

c. The detailed hard and soft costs, including associated documentation,

d. The number of floors, by intended use as residential or non-residential, and

e. The number of residential units to be constructed;

4. A description of all non-residential areas with related and total square footages, and identification of all non-residential uses;

5. A description of all residential areas with related and total square footages, number of units, and identification of all residential uses;

6. A description of the all low-income residential areas with related and total square footages, number of units, and identification of all low-income residential uses;

7. For purposes of this section, square footage does not include areas used for patios, porches, and parking, unless these areas are demonstrated to the satisfaction of the City to be economically necessary to the project or the City otherwise determines that it is appropriate to include the areas in the square footage;

8. A commitment from the project applicant, acceptable to the City, that the project will be maintained and operated in a manner consistent with the project application for the total duration of the partial property tax exemption;

9. A calculation quantifying the residential and non-residential uses of the project, including allocations to low-income residential housing uses; and

10. Such other information as the City, in its discretion, may require.

K. By filing an application, a project applicant irrevocably agrees to allow the City reasonable access to the project and to project-related documents, including the right to enter onto and inspect the project property and to copy any project-related documents during the period of application review and, if approved, the entire duration of the partial property tax exemption.

L. Unless an exception is granted by the City, projects “in progress” at the time of application may include only costs incurred within six months of the application date. Factors that the City

may consider in determining whether or not to grant an exception to the six-month limitation on costs include, but are not limited to, the following:

1. Delay due to terrorism or acts of God;
2. Delay occasioned by requirements of the City;
3. Resultant undue hardship to the project applicant;
4. The complexity of the project; and
5. The benefit of the project to the community.

M. For applications filed before project completion, the City may provide a conditional letter of prospective certification of the project pending its completion. To obtain a final certification of the project, the project applicant must provide timely notification to the City of the project's completion, together with a copy of the certificate of occupancy and other information as the City may require. A project applicant must provide the notice and required documentation to the City within 90 days of project completion which is typically the date of the certificate of occupancy unless the City determines that another date is more appropriate.

N. If an application is rejected for failure to meet City review requirements, then:

1. The City will notify the project applicant that the application has been rejected; and
2. The City, at its own discretion, may allow the resubmission of a rejected application for project certification ("as is" or with appropriate corrections or supplementations) or may reconsider a determination by it to reject an application. Factors that the City may consider in allowing a resubmission of a rejected application or the reconsideration of a determination by it to reject an application include, but are not limited to, the following:
 - a. Whether or not rejection results in undue hardship to the project applicant,
 - b. The best interests of the community,
 - c. The level of cooperation from the project applicant,
 - d. The level and materiality of initial non-compliance by the project applicant, and
 - e. Mitigation of any initial non-compliance by the project applicant;
3. If the City accepts for review a previously rejected application, it may do so, at its discretion, on a prospective basis or based upon the original date of filing. Factors that the City may consider in determining the date to apply to a previously rejected application include, but are not limited to, the following:
 - a. Whether or not occupancy or readiness to occupy residential units in the project has occurred since the original application,
 - b. Whether or not undue hardship would result to the project applicant,

- c. The best interests of the community, and
- d. The level and materiality of non-compliance in the initial application.

3.50.100 Project Criteria

A. The City will evaluate each accepted application to determine whether or not to certify the proposed project. A project, to qualify for City certification, must satisfy each of the following criteria:

1. The project must be entirely located within an approved VHDZ located within the City's jurisdiction;
2. The project must include one or more equalized floors, as calculated by the City's calculator;
3. Construction or rehabilitation must have been started on each building included in the project; and
4. A minimum of 50 percent of the project's ground floor that fronts on the primary public street must be constructed to building code standards for commercial use or planned for commercial use upon completion. If a project has access to only one public street, the square footage of driveways, loading docks, bike storage, garbage receptacles, and building entryways shall be excluded before applying the 50 percent test.

B. Certified projects with at least one equalized floor of low-income residential housing may qualify for a partial property tax exemption with respect to the land contained within the tax lot upon which the certified project stands for a period not less than 10 years, but will not qualify for a partial property tax exemption under the program for land not necessary for the low-income residential housing units to be built.

3.50.110 City Certification of Projects

A. The City will endeavor to process each accepted application and make a determination whether or not to approve such application, in whole or in part, within 60 days of when the accepted application is received by the City.

B. The determination of the City to certify or deny certification is a discretionary determination and is not subject to judicial or administrative review.

C. If the application is approved, the City will:

1. Issue a letter to the project applicant describing the certified project with an explanation of the partial property tax exemption effective for the certified project; and
2. Send a copy of the project information to the county assessor.

D. The owner of a certified project must execute and record a project use agreement, including restrictive covenants running with the land and equitable servitudes, satisfactory to the City in the Yamhill County records. Recordation of such instruments satisfactory to the City

constitutes a condition precedent to the approval of the certified project taking legal effect. The City may void any certified project approval for failure to timely record and provide the City with a copy of any such instruments. The owner shall be responsible for the cost of recording and providing satisfactory evidence to the City that such instruments have been properly recorded.

E. If the application is denied, the City will send written notice of the denial to the project applicant. At its option, the City may allow reapplication by the project applicant consistent with Section 3.50.090(N).

F. Certification by the City of a project may be partial in scope. The City's letter of approval will identify what portions of the property and improvements included in the project application constitute the certified project.

1. No partial property tax exemption will be awarded for a partial equalized floor of residential housing and the maximum number of equalized floors in a project is four;

2. Accordingly, the City will determine the number of residential equalized floors in a project available for calculating a corresponding property tax exemption by capping potential equalized floors at four and by rounding down to the next complete equalized floor of residential housing. In other words, a certified project will contain exactly one, two, three or four residential equalized floors reflecting the number of complete equalized floors of residential housing in a project up to the maximum four equalized floors.

G. The letter of approval from the City also may include such information and instructions as the City deems appropriate.

3.50.120 Project Monitoring Fee—Modification or Transfer of Ownership

A. A monitoring fee shall be paid by the project applicant to the City at the time of project application, or as otherwise directed by the City, to cover the City's actual and anticipated costs of monitoring and otherwise addressing compliance by the certified project with program requirements, including, without limitation, ORS 307.841 to 307.861 and other applicable law. The City may consider factors including, but not limited to, the following in determining the amount of this monitoring fee:

1. The size of the project;
2. The number of residential housing units;
3. The amount of commercial space;
4. Project uses;
5. Project location;
6. The duration and complexity of compliance requirements;
7. The level and amount of staff or other services involved;
8. The use of supplies, equipment or fuel; and

9. The number of separate sites and/or buildings.

B. The City may condition its approval of a certified project upon payment by project applicant of the applicable fee described above in subsection A. The City may void or terminate the certification of all or a portion of a certified project if such fees, or any part thereof, are not timely paid.

C. Modifications to or transfers of ownership of a certified project must receive prior written approval from the City. The City will not unreasonably withhold its approval of such modifications to or transfers of ownership. The City may void or terminate the certification of all or a portion of a certified project if modifications to or transfers of ownership are made without its prior written approval except where such modifications or transfers occur by operation of law following death or divorce.

D. If there are proposed or actual modifications to or transfers of ownership of the certified project, the certified project owner shall notify both the county assessor and the City of any change in the owner's name, contact person, mailing address and phone number within 30 days of the change.

E. The City may require the certified project owner to pay an administrative fee to cover the City's actual and anticipated costs of reviewing and processing such modification or transfer including, without limitation, effecting the legal review, amendment, execution or recording of related documents.

F. The City may condition its approval of a modification to or transfer of ownership in a certified project upon payment by the certified project owner of the administrative fee described above in subsection E. The City may void or terminate the certification of all or a portion of a certified project if such an administrative fee, or any part thereof, is not timely paid.

3.50.130 Partial Property Tax Exemptions for Certified Projects

A. In order to receive a partial property tax exemption under this chapter, the certified project owner, the project applicant or other person responsible for the payment of property taxes on the certified project must notify the county assessor that the project has been approved by the City as a certified project and qualifies for a partial property tax exemption.

B. The notification described above in subsection A must be delivered to the county assessor in writing on or before April 1 preceding the first tax year for which the partial property tax exemption is sought.

C. Except as clarified by subsections D and E of this section, the exemption applies to the construction or rehabilitation of real property improvements associated with the certified project and land, if there is an inclusion of low-income housing on the certified project, in each of the tax years for which the exemption is available.

D. The property exemption rate equals 20 percent (0.2) multiplied by the number of fully equalized floors (among all associated buildings exempt in that year), up to but not exceeding four such equalized floors, that are:

1. For residential use;
2. Fully equalized, which means the residential allocation of equalized floors quotient is rounded down to the nearest whole number in accordance with NMC 3.50.110(F)(2); and
3. Constructed or rehabilitated as part of the vertical housing development project.

E. The partial property tax exemption on a certified project is available for ten consecutive tax years beginning with the first tax year in which, as of the assessment date, the project is occupied or ready for occupancy following its approval by the City as a certified project.

F. If during the period of partial tax exemption, any part of a project dedicated for residential use is converted to or used as non-residential area, the county assessor and the City shall be notified by the project owner of such change within 90 days of submission of the proposed use change. Similarly, the county assessor and the City shall be notified in writing by the project owner if any part of a project dedicated to low-income residential housing is converted to other purposes or otherwise used in a manner that does not comply with low-income residential housing requirements. The City may decertify the project, in whole or in part, if the project owner fails to comply with either of these notification requirements.

G. In order to receive partial property tax exemption with respect to a certified project, the certified project owner shall apply to the county assessor. Upon written application for partial exemption to the county assessor, the certified project owner will provide the county assessor:

1. A letter specifically requesting the partial tax exemption in accordance with the certified project approval certification;
2. A copy of the final project application for certification;
3. A copy of the certified project approval certificate issued by the City;
4. A copy of the certificate(s) of occupancy for the entire certified project; and
5. Such fee(s), if any, as the county assessor may require.

H. The certificate of occupancy or temporary certificate of occupancy must be dated prior to January 1 of the assessment year for which the exemption is requested.

I. The written application for exemption must be made to the county assessor on or before April 1 of the assessment year for which the exemption is sought and the exemption will be effective for the first year for which the partial property tax exemption is available and for the next nine consecutive tax years.

J. If all or a portion of a certified project is decertified by the City, that portion of the certified project shall be disqualified from partial property tax exemption as set forth in the notice of decertification.

3.50.140 Monitoring—Investigations—Remedies— Decertification’s

A. The City may monitor and investigate certified projects for compliance with program requirements and other applicable law as it deems appropriate. Owners or operators of certified projects shall prepare an annual report to the City on the number of residential and low-income residential housing units and the amount of space being used for commercial use and for residential use.

B. The City may undertake any remedial action that it determines to be necessary or appropriate to enforce City interests or program requirements including, without limitation, commitments provided by project applicants in the final application and certification. Remedial actions may include, but are not limited to:

1. The requesting of project documentation including, but not limited to, current rents on an annual basis and lease agreements with redacted personal information;
2. The issuance of orders and directives with respect to the project or otherwise;
3. The initiation and prosecution of claims or causes of action, whether by administrative hearing, civil action or otherwise (including, without limitation, actions for specific performance, appointment of a receiver for the certified project, injunction, temporary restraining order, recovery of damages, collection of fees, etc.); and
4. The decertification of all or a portion of a certified project.

C. Prior to decertifying all or part of a certified project and directing the county assessor to disqualify all or part of the project for partial property tax exemption treatment, the City shall issue a decertification notice to the certified project owner identifying the following information:

1. The property decertified from the project;
2. The number of equalized floors that have ceased qualifying as residential housing for purposes of the program;
3. The number of equalized floors that have ceased qualifying as low-income residential housing for purposes of the program;
4. The remaining number of equalized floors of residential housing in the project and a description of those remaining equalized floors and their specific use;
5. The remaining number of equalized floors of low income residential housing in the project and a description of the property of each remaining equalized floor of low income residential housing;
6. If the project no longer includes commercial space consistent with the intent of the program; and
7. Such other information as the City may determine to provide.

D. Prior to issuance of a notice of decertification, the City may provide the certified project owner with notice of an opportunity to correct noncompliance within a reasonable amount of time as determined by the City. In determining the amount of time to provide the certified project owner to correct noncompliance, the City may consider factors, including, but not limited to:

1. The severity of the non-compliance;
2. The impact of non-compliance upon project tenants and patrons;
3. The cost and time reasonably necessary to correct program non-compliance;
4. The past history of compliance and non-compliance by the project owner; and
5. Such other factors as the City, in its discretion, may deem relevant.

E. If the City determines that the certified project owner has failed to correct any noticed program non-compliance within the time allowed by the City in its notice, the City may issue the notice of decertification and direct the county assessor to disqualify all or a portion of the project from property tax exemption under the program.

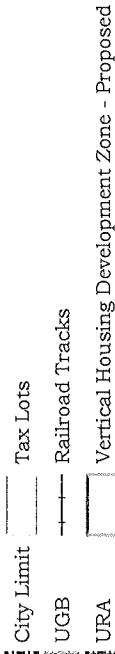
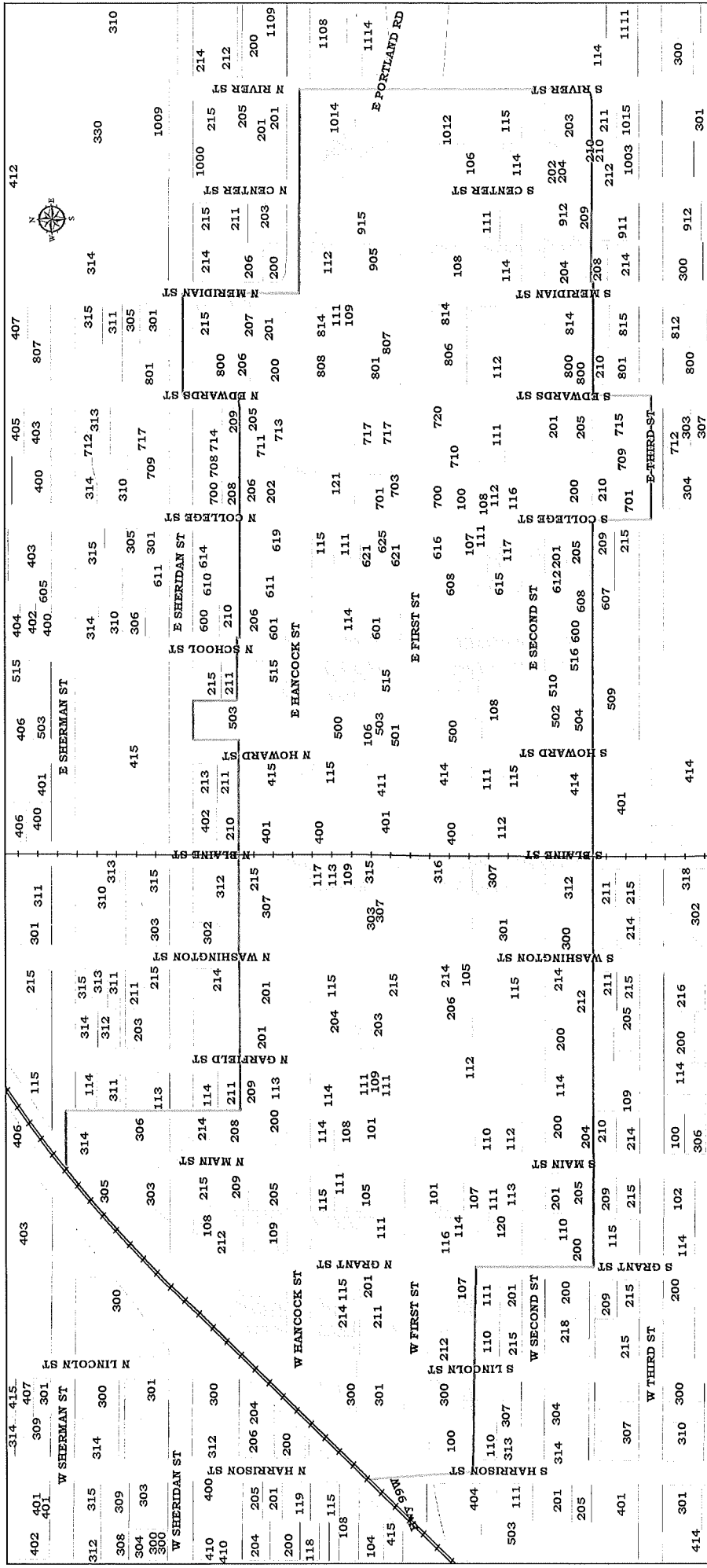
F. The City also may issue a notice of decertification and direct the county assessor to disqualify all or a portion of a project from property tax exemption under the program with respect to program non-compliance for which it determines not to provide prior notice and an opportunity for non-compliance correction.

G. The effective date of a decertification is the effective date of same provided in the notice of decertification identified above in subsection C. The effective date of a decertification may be retroactive from the date of the actual notice of decertification only to the commencement of the non-compliance for which the decertification is issued as determined by the City. In determining whether or not to make the decertification retroactive, the City may consider factors including, but not limited to, those identified above in subsection D, the intentional nature of the non-compliance, and when the owner or its agents became aware or reasonably should have become aware of the non-compliance.

3.50.150 Waiver

The City may waive or modify any requirements of this chapter unless such waiver or modification would violate applicable federal or state statutes or regulations.

Appendix A: Map 1 - Vertical Housing Development Zone



IMPORTANT NOTICE TO ALL USERS:
 DISCLAIMER AND LIMITATION OF LIABILITY
 This information is not guaranteed to be accurate and may contain errors and omissions.
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 NO WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR ANY INFORMATION HEREIN.
 This map is created from various data sources and is subject to change without notice. This map is intended for general planning purposes only.

Scale: 1 inch = 240 feet
 0 240 480 960 Feet
 City Limit Tax Lots
 UGB Railroad Tracks
 URA Vertical Housing Development Zone - Proposed

City of Newberg
 Planning Department
 1100 NE Oregon Street, Suite 100
 Newberg, Oregon 97132
 Phone: 503.535.2200
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 Email: planning@newberg.or.us
 Date: 11/15/2011
 Author: Keith McLinn, GIS Analyst

Exhibit “B”: Findings

ORS 307.844 Zone designation; local taxing district election to not participate in zone; notification of local taxing districts.

(1)(a) A city may designate an area within the city as a vertical housing development zone.

Finding: The City has designated a proposed area within the city limits coterminous with the C-3 (central business) and M-2 (light industrial) zoning districts. The proposed VHDZ is illustrated on Attachment 2.

(b) A county may designate as a vertical housing development zone an area that is subject to a goal exception for residential use approved under ORS 197.732.

Finding: This requirement is not applicable since the proposed VHDZ is not located within an area subject to a goal exception for residential use.

(2) With the prior consent of the governing body of each city in which a proposed vertical housing development zone is to be located, a county may designate any area within each city that has given consent for vertical housing development zone designation as a vertical housing development zone.

Finding: This requirement is not applicable since the City of Newberg is the only governing body proposing this zone.

(3) A city and a county, or any combination of cities and counties, may designate an area within each jurisdiction as a vertical housing development zone.

Finding: This requirement is not applicable since the City of Newberg is the only governing body proposing this zone.

(4) A local taxing district may elect not to participate in a vertical housing development zone. A local taxing district that elects not to participate may continue to impose taxes on property otherwise exempt from ad valorem property tax under ORS 307.864.

Finding: The VHDZ opt-in/opt-out letter was sent regular mail to all taxing districts on February 9, 2021 (Attachment 5). All taxing districts have opted-in to Newberg’s VHDZ. City staff attended taxing district board meetings where the taxing districts voted to support Newberg’s VHDZ, with the exception of Portland Community College and Willamette Educational Service District which informed the City via email of their intent to opt-in to the VHDZ (Attachment 6).

(5) A city or county must consider the potential for displacement of households within a proposed vertical housing development zone before designating the zone.

Finding: The City utilized Leland Consulting Group to prepare the Displacement Analysis dated March 27, 2020 (Attachment 6). The conclusion of the Displacement Analysis is that the

proposed VDHZ has little chance of directly causing displacement of residents within the proposed VHDZ (page 17).

(6)(a) Before designating a vertical housing development zone, a city or county, as applicable, must notify the local taxing districts, other than the city or county, that have territory in the proposed vertical housing development zone of the city's or county's intention to designate a vertical housing development zone.

(b) The notice required under paragraph (a) of this subsection must be sent by regular mail and must:

(A) Describe the proposed vertical housing development zone;

(B) Explain the exemption described in ORS 307.864 that would apply if the proposed zone is designated; and

(C) Explain the process by which a local taxing district may elect not to participate in the vertical housing development zone.

Finding: On February 9, 2021, the City provided a notice per the requirements of (A-C) to all local taxing districts. City staff also attended several Board meetings to answer questions regarding the VHDZ. The following summarizes meetings attended after the opt-in/opt-out letter was sent to the taxing districts.

PROCESS TIMELINE FOR TAXING DISTRICT CONSIDERATIONS

Date:

- 08/27/19: TVF&R approved Newberg's proposed VHDZ.
- 02/23/21: Newberg School District 29J Board approved Newberg's VHDZ.
- 02/25/21: Staff attended a Yamhill County Board of Commissioners (also functions as the Oregon State University Extension Service Board) to answer additional questions. No opt-in/opt-out decision was made at this meeting.
- 02/25/21: The Chehalem Park and Recreation District (CPRD) discussed the opt-in/opt-out letter and decided that they wanted staff to attend a subsequent meeting to address questions.
- 03/04/21: Staff attended a subsequent CPRD meeting to answer additional questions. The Board voted to opt-in to Newberg's VHDZ during this meeting.
- 03/04/21: City staff were informed via email by Portland Community College School Board staff that the Board would be opting-in to Newberg's VHDZ.
- 03/10/21: Staff attended a Yamhill County Soil and Water Conservation District Board meeting to answer additional questions. The Board chose to opt-in at this meeting.
- 03/11/21: Staff attended a follow up meeting with the Yamhill County Board of Commissioners (also functions as the Oregon State University Extension Service Board) to answer additional questions. Both Boards opted-in to Newberg's VHDZ.
- 04/06/21: The Willamette Educational Service District Board voted to support Newberg's VHDZ.
- 04/08/21: The City of Newberg Planning Commission voted to approve Resolution No. 2021-372.
- 04/27/21: The City of Newberg Affordable Housing Commission unanimously

recommended approval of the VHDZ to the City Council.
05/17/21: After proper notice, the Newberg City Council held a public hearing on May 17, 2021, considered public testimony, and deliberated. They found that creating Chapter 3.50 Vertical Housing Development Zones to be in the best interests of the City.

This criterion was met.

(c) Notice of the election of a district listed in ORS 198.010 or 198.180 not to participate in the vertical housing development zone must be received by the city or county, as applicable, within 30 days after the district receives the notice required under paragraph (a) of this subsection.

Finding: The City did not receive any notices from taxing districts stating their decision to not participate in Newberg's VHDZ.

(7)(a) Not sooner than 60 days after sending the notice required under subsection (6)(a) of this section, the governing body of the city or county that seeks to designate a vertical housing development zone may adopt an ordinance or resolution designating the vertical housing development zone and describing the area and boundaries of the zone. The ordinance or resolution may include additional criteria for certification of a vertical housing development project that do not conflict with the requirements described in ORS 307.858.

FINDING: This requirement is procedural and has been adhered to as part of the consideration process. The VHDZ opt-in/opt-out letters were mailed via regular mail on February 9, 2021. It is estimated that the taxing jurisdictions received these letters on or about February 16, 2021. On May 17, 2021, the City of Newberg Council, the governing body of the City, will conduct a first hearing of the proposed VHDZ. The 60 day period from February 16, 2021 is April 10, 2021. The City Council will not make a decision on the VHDZ sooner than 60 days. This criterion is met.

(b) As soon as practicable after adopting the ordinance or resolution designating the zone, the governing body shall notify the assessor of the county in which the zone is located of the designation of the zone and the districts that elected not to participate in the zone.

Finding: This requirement will be adhered to after the Ordinance is duly adopted by the City Council.