

City of Brookings

MEETING AGENDA - AMENDED

CITY COUNCIL

Monday, January 14, 2019, 7:00pm

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

CITY COUNCIL

A. Call to Order

B. Pledge of Allegiance

C. Swearing in of Elected Officials – Mayor Jake Pieper, Councilor John McKinney and Councilor Ron Hedenskog

D. Election of City Council President

E. Roll Call

F. Ceremonies

1. Brookings Harbor Community Helpers Proclamation [Pg. 3]

G. Scheduled Public Appearances

(Informational presentations to Council on non-agenda items – 10 minute limit per person.)

1. Connie Hunter – Brookings Harbor Community Helpers
2. Nathaniel Barnard – Homelessness Presentation

H. Oral Requests and Communications from the audience

(Public Comments on non-agenda items – 5 minute limit per person.*)

I. Consent Calendar

1. Approve edited Council minutes for November 13, 2018 [Pg. 4]
2. Approve Council minutes for December 10, 2018 [Pg. 8]
3. Approve Planning Commission minutes for November 6, 2018 [Pg. 10]
4. Receive monthly financial report for November 2018 [Pg. 14]

J. Staff Reports

1. Riparian Protection Overlay Zone Ordinance [PWDS, Pg. 20]
 - a. LCOG Memo [Pg. 21]
 - b. Riparian Protection Overlay Zone Ordinance 19-O-776 [Pg. 25]
 - c. Exhibit A – Findings – Riparian Protection Overlay Zone [Pg. 27]
 - d. Exhibit B – Findings – Riparian Protection Overlay Zone – Proposed Code Language [Pg. 38]
 - e. Exhibit C – Findings – Riparian Protection Overlay Zone Map [Pg. 47]

- f. DLCD Natural Resources Specialist Correspondence – Amanda Punton Email [Pg. 48]
- 2. Model Code Revisions for Homeless Resources [PWDS, Pg. 50]
 - a. City of North Bend – Conditional Use Permit Hearing for a temporary warming center at College Park Community Church [Pg. 51]
 - b. Sample Code Language, Patterson California – “Emergency Shelter Overlay Zone” [Pg. 93]
 - c. Mass Shelters and Housing Zoning Code Updates (pg 13, 17), Portland Oregon [Pg. 98]
 - d. Zoning for Shelter for Homeless, Menlo Park California [Pg. 100]
 - e. Demographic & Housing Profiles for Curry County – Oregon Housing and Community Services [Pg. 107]
- 3. Authorize a loan from the Special Public Works Fund with the Oregon Business Development Department (OBDD) [City Manager, Pg. 111]
 - a. Resolution 19-R-1151 [Pg. 112]
 - b. Financing Contract with OBDD [Pg. 114]

K. Informational Non-Action Items

- 1. December Vouchers [Pg. 127]
- 2. Committee Vacancies [Pg. 130]

L. Remarks from Mayor and Councilors

M. Adjournment

*Obtain Public Comment Forms and view the agenda and packet information on-line at www.brookings.or.us, at City Hall and at the local library. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 72 hours advance notification. Please contact 469-1102 if you have any questions regarding this notice.

City of Brookings *Proclamation*

WHEREAS, one in five Oregonians now need food assistance, including a large number of senior citizens; and

WHEREAS, several Brookings-based organizations have stepped forward during these difficult economic times to offer their facilities, volunteers and financial support to provide food assistance to those in need; and

WHEREAS, several community-based organizations and church institutions are now coordinating their efforts to provide food service to those in need several days each week; and

WHEREAS, these programs are largely funded through charitable contributions;

NOW, THEREFORE, the City Council of the City of Brookings hereby proclaims its support for the efforts of the

BROOKINGS HARBOR COMMUNITY HELPERS FOOD BANK

BE IT FURTHER RESOLVED, that the City Council commends the Food Bank's members, volunteers and contributors for their commitment to this worthy endeavor, and encourages the participation and support of its citizens toward the program's continued success.

In Witness Whereof, I, Mayor Jake Pieper, do hereto set my hand and cause the official seal of the City of Brookings, Oregon, to be affixed this 14th day of January, 2019.

Mayor Jake Pieper

City of Brookings CITY COUNCIL MEETING MINUTES REVISED

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415
Tuesday, November 13, 2018

Call to Order

Mayor Pieper called the meeting to order at 7:07 PM.

Roll Call

Council present: Mayor Jake Pieper, Councilors Bill Hamilton, Brent Hodges, Ron Hedenskog, and Dennis Triglia present; a quorum present

Staff present: City Manager Janell Howard, City Attorney Martha Rice, Administrative Aide Rita Ritz, Public Works & Development Director Tony Baron, Deputy Public Works Director Jay Trost, Building Official Garrett Thomson, and Deputy HR/Accountant Lu Ehlers, and Planning Assistant Lauri Ziemer.

Media Present: Jane Stebbins from Curry Pilot present

Others Present: Approximately 40 audience members

Modification to Agenda

Councilor Triglia moved, Councilor Hodges seconded and Council voted 2-3, with Councilor Hedenskog, Hamilton and Mayor Pieper voting "nay", to add Father Bernie Lindley as a Public Appearance, motion failed. *(Revised after the Council meeting on December 10, 2018. To include the abstract votes cast by Council. Presented and approved during the meeting of January 14, 2018.)*

Councilor Triglia moved to remove Item D3, Removal of Committee Members from the agenda, no second, motion failed.

Ceremonies

Worldwide Candle Lighting Day

Councilor Hedenskog moved, Councilor Hodges seconded and Council voted unanimously to proclaim the second Sunday in December as Worldwide Candle Lighting Day.

- Mayor Pieper read the proclamation and presented it to Georgia Cockerham
- Georgia Cockerham addressed Council thanking them for their support

Introduction of Michael Matheson

Brian Helliwell of Jacobs introduced Michael Matheson.

- Michael addressed Council and informed them of his background

- Mayor Pieper and Council welcomed Michael to Brookings, and thanked Jacobs for all they have done

Removal of Committee Members

Mayor Pieper

Councilor Hedenskog moved, Councilor Hamilton seconded and Council voted 3-2, with Councilor Triglia and Hodges voting "nay", to remove Candice Michel from TPAC Committee.

Councilor Hedenskog moved, Councilor Hamilton seconded and Council voted 3-2, with Councilor Triglia and Hodges voting "nay", to remove Teresa Lawson from Budget Committee.

The following individuals addressed Council in opposition to the measure:

1. Dave Carlson of 1223 Barclay Drive
2. Debra Worth of 328 S. Hazel Street
3. Teresa Lawson of 820 Brookhaven Drive
4. James M Benson of 315 Memory Lane
5. Candice Michel of 1253 Rowland Lane
6. Mary Ralls of 16063 Driftwood Lane
7. Dan Sherman of 820 Brookhaven Drive
8. Michael Frederick of 16883 Yellowbrick Rd
9. Shane Eck of 216 Cypress Street
10. Tracy Rupp of 97671 Marine Drive
11. Judy Kaplar of 441 Buena Vista Loop
12. Barbara Braunstein of 97894 Port View Lane
13. Marty Grodin of 1245 Iris Street

Public Hearing/Ordinance/Resolutions

Flood Damage Prevention

Public Works & Development Services Director Tony Baron presented the staff report.

Councilors discussed details of the Flood Damage Prevention ordinance.

Mayor Pieper opened the Public Hearing at 8:39 p.m.

With no one present wishing to address Council regarding the item, Mayor Pieper closed the Public Hearing at 8:40 p.m.

Councilor Hedenskog moved, Councilor Hamilton seconded and Council voted unanimously to adopt Ordinance 18-O-775, amending Chapter 17.98, Flood Damage Prevention, of the Brookings Municipal Code to align with current Federal Emergency Management Agency (FEMA) and Department of Land Conservation and Development (DLCD) flood management regulations.

Manufactured Dwelling Permit Fee Update

Building Official Garrett Thomson presented the staff report.

Councilors expressed the increase as being too high and how it could affect lower income families, also how it would not encourage people to move to Brookings. They asked to see this brought back at a later time.

Other Councilors stated the increase not being high enough to cover all of the expenses and time for the Building Officials.

Councilor Hedenskog moved to raise the rate of Resolution 18-R-1149, to increase the rate of manufactured dwelling permit fees by one hundred dollars, no second, motion fails.

Councilor Hodges moved, Mayor Pieper seconded and Council voted 2-3, with Councilor Hedenskog, Hamilton and Triglia voting "nay" to accept Resolution 18-R-1149, approve the increase of manufactured dwelling permit fees. Motion fails.

Councilor Triglia moved, Council Hedenskog seconded and Council voted 3-2, with Councilor Hodges and Mayor Pieper voting "nay" to remove Resolution 18-R-1149, increase of manufactured dwelling fee update.

Oral Requests and Communications from the audience

- Father Bernie Lindley of 401 Fir Street, addressed Council thanking Councilor Hedenskog for his serves over the years as a community kitchen manager and requested matters regarding Homelessness be brought to a workshop to form a possible task force.
- Jean Soderman of 1724 Arch Lane, addressed the Council about the organization Indivisible 97415.

Consent Calendar

1. Approve Council minutes for October 22, 2018
2. Accept Parks and Recreation Commission minutes for September 27, 2018
3. Accept Planning Committee minutes for July 10, 2018
4. Accept Planning Committee minutes for August 7, 2018
5. Receive monthly financial report for October 2018

Councilor Triglia moved, Councilor Hedenskog seconded and Council voted unanimously to approve the Consent Calendar.

Staff Reports

Salmon Run Gold Course Property Tax

City Manager Howard presented the staff report.

Councilors discussed the pros and cons of waiting to pay the tax or to pay the tax and hope to receive a credit back.

Councilor Hedenskog moved, Councilor Hodges seconded and Council voted 4-1, with Councilor Triglia voting “nay”, to direct staff to pay the property tax amount assessed on the Salmon Run Golf Course.

Remarks from Mayor and Councilors

Councilor Hamilton remarked how well Chetco Point improvements are constructed and thanked the family who donated for the improvements in honor of their parents. He reminded everyone to be in the spirit of Thanksgiving, and to please be kind to one another.

Councilor Triglia congratulated Mayor Pieper and Councilor Hedenskog on their victories for being re-elected to office. He also thanked all Veterans for their service, and wished them a Happy Veterans Day.

Mayor Pieper commented on how incredible the new ball field lights are.

Adjournment

Councilor Hedenskog moved, Councilor Hodges seconded, and Mayor Pieper adjourned the meeting at 9:49 p.m.

Respectfully submitted:

ATTESTED:
this _____ day of _____ 2018:

Jake Pieper, Mayor

Janell K Howard, Interim City Recorder

City of Brookings

CITY COUNCIL MEETING MINUTES

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

Monday, December 10, 2018

Call to Order

Mayor Pieper called the meeting to order at 7:00 PM.

Roll Call

Council present: Mayor Jake Pieper, Councilors Bill Hamilton, Brent Hodges, Ron Hedenskog, and Dennis Triglia present; a quorum present.

Staff present: City Manager Janell Howard, City Attorney Martha Rice, Deputy Public Works Director Jay Trost, and Administrative Aide Rita Ritz.

Media Present: None

Others Present: Approximately Thirteen audience members.

Appointments

Appointment of Clayton Malmberg to Planning Commission

Councilor Hedenskog moved, Councilor Hamilton seconded and Council voted 4-1, with Councilor Triglia voting "nay", to appoint Clayton Malmberg to Planning Commission.

Oral Requests and Communications from the audience

- Lucie La Bonte' of Gold Beach, addressed Council regarding League of Women Voters of Oregon asking the Council to adopt a proclamation promoting Civil Discourse in the future.
- Larry Demry of 1234 Moore Street, addressed Council with the issue of parking recreation vehicle along the road ways.

Consent Calendar

1. Approve Council minutes for November 13, 2018
2. Accept TPAC Committee minutes for October 11, 2018
3. Accept Parks and Recreation Commission minutes for October 18, 2018
4. Port Cleaning Station Remodel Evaluation
5. Approve Superfly Distilling Co. Liquor License
6. Approve El Rancho Viejo Liquor License

Councilor Hedenskog moved, Councilor Triglia seconded and Council voted unanimously to approve the Consent Calendar.

Staff Reports

Local Government Grant application

Deputy Public Works and Development Services Director Trost presented the staff report.

Councilor Hedenskog moved, Councilor Hodges seconded and Council voted unanimously to adopt Resolution 18-R-1150 authorizing submission of a Local Government Grant application to the Oregon Parks and Recreation Department for park improvement projects at Azalea Park.

Certification of November 6, 2018 Election Abstraction

City Manager Janell Howard presented the staff report.

Councilor Hedenskog moved, Councilor Hamilton seconded and Council voted unanimously to accept the November 6, 2018 Election Abstraction from the Curry County Clerk.

Accept Audit

City Manager Janell Howard presented the staff report.

Councilors noted a clean audit is a great accomplishment.

Councilor Triglia moved, Councilor Hodges seconded and Council voted unanimously to accept the City's Audit for the fiscal year ended June 30, 2018.

Remarks from Mayor and Councilors

Councilor Hamilton wished everyone Happy Holiday, Merry Christmas

Mayor Pieper commented on how nice Natures Coastal Holiday is this year and encourages anyone who has not gone to see it, should go.

Adjournment

Councilor Hedenskog moved, Councilor Triglia seconded, and Mayor Pieper adjourned the meeting at 7:22 p.m.

Respectfully submitted:

ATTESTED:
this _____ day of _____ 2018:

Jake Pieper, Mayor

Janell k Howard, Interim City Recorder

BROOKINGS PLANNING COMMISSION MINUTES
November 6, 2018

CALL TO ORDER

The regular meeting of the Brookings Planning Commission was called to order by Vice Chair Wulkowicz at 7:00 pm in the Council Chambers at Brookings City Hall followed by the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Tim Hartzell, Skip Hunter, Cheryl McMahan, Gerry Wulkowicz

Commissioners Absent: Chair Bryan Tillung

Staff Present: PWDS Director Tony Baron, Planning Tech Lauri Ziemer; remotely by phone - LCOG Representative Jacob Callister and DLCD NFIP Coordinator Celinda Adair

Others Present: approximately 30 audience members

PLANNING COMMISSION CHAIR PERSON ANNOUNCEMENTS - None

THE PLANNING COMMISSION TOOK THE FOLLOWING ACTION IN THE SCHEDULED PUBLIC HEARINGS

5.1 Riparian Protection Ordinance - File No. CP-1-18 - proposing land use regulations for areas adjacent to and containing riparian areas (waterways). Commissioner Wulkowicz opened the legislative hearing at 7:05 pm. Jacob Callister, LCOG Planning Contractor presented and explained the ordinance. A joint public workshop on the matter was held September 17, 2018.

Eric Ratliff, 143 Tanbark, Brookings questioned riparian qualifications, including who/what determines a creek or storm culvert as a fish habitat.

Noah Bruce, 108 Seacliff Terrace, Brookings expressed concerns that property owner rights are protected throughout the process. Believes his property is suffering erosion from being required to remove a walkway in an area that had been adjudged as riparian and matter has yet to be determined after court action. He would like to put the walkway back in and does not believe his property near the jetty rock area is a riparian area.

Stacy Savona, Oregon Dept of Forestry, 415 Redwood Street, Brookings provided information on fish habitat and riparian set backs. She volunteered to work with ODF to collect updated data.

Sue Gold, 95730 House Rock Road, Brookings expressed concern for the waterway which runs through her property which is located in the Cape Ferrelle area and how the ordinance would affect property owners.

Katherine Wiley, 96370 Duley Creek Road, Brookings expressed concern over the proposed adoption of the riparian overlay zone and ordinance and how it would affect property owners. She submitted her written concerns for the record and requested the ordinance adoption be delayed.

LCOG Representative Jake Callister clarified that the ordinances' purpose is for the protection of resources which currently have no protection, not about water quantities and allocations. No participant requested additional time to submit materials. The public hearing was closed at 8:20 pm.

The Commission deliberated on the matter. Commission suggested the City request assistance from ODF to further review water courses and advised that in regards to concerns about the possibility of creating hydro electric sources on streams that the ordinance does not pertain to wetlands and damming of streams. **Motion made by Commissioner Wulkowicz to send a positive recommendation to City Council on File CP-1-18 establishing a riparian protection overlay zone and accompanying standards for the City of Brookings consistent with Oregon statewide Planning**

Goal 5, Riparian Safe Harbor Inventory Procedures and Goal 5, Safe Harbor protections based on the criteria presented with the addition of a request for the City to review the delineation of the fish bearing streams listed on the map with state resources and that the end of paragraph "Water dependent" on page 4 (page 17 in the supplemental packet), that the words "for water-borne transportation, recreate on, energy production or source of water" be deleted from the text. Further discussion pursued on whether the jetty meets riparian qualifications and on the ordinance. Jacob Callister recommended not to delete the text as motioned and that he would review other coastal city ordinances and he would develop less ambiguous language around the uses that would provide clarity to the ordinance when submitted to City Council. **Motion seconded by Commissioner Hartzell. By a 0-4 vote the motion failed.**

Motion made by Commissioner Wulkowicz to have City staff contact state resources to reassess the delineation of the waterways shown on the map of the ordinance and for the City to reassess the definition of water dependent uses to be accessed across the riparian corridor; motion seconded by Commissioner Hartzell. By a 4-0 vote the motion carried. Matter forwarded to City Council.

5.2 Flood Damage Prevention Amendments - File No. CP-2-18 - FEMA and the Oregon Department of Land Conservation and Development required amendments to the City's Flood Damage Prevention Ordinance. Vice Chair Wulkowicz opened the legislative hearing at 8:31 pm. LCOG Planning Contractor presented and explained the amendments. Celinda Adair, DLCD NFIP Coordinator advised a FEMA Open House was held in Brookings March 1, 2017 explaining to property owners that the amendments were to update codes to improve the National Flood Insurance Program which protects structures during flood events. No members of the public spoke in opposition and no participant requested additional time to submit materials. The public hearing was closed at 8:49 pm.

The Commission deliberated on the matter. **Motion made by Commissioner McMahan to approve the Oregon Department of Land Conservation and Development required amendments to the City's Flood Damage Prevention Ordinance; motion seconded by Commissioner Hunter. By a 4-0 vote the motion carried.** Matter forwarded to City Council.

5.3 In the matter of the **File No. CUP-3-18**, a request for approval of a Conditional Use Permit to operate a Short Term Rental facility at 96414 Dawson Road, a 1.32 acre parcel located on Assessor's Map No. 40-14-36-BB; Tax Lot 03000, zoned R-1-6.

There was no ex parte contact, bias, personal interest, or conflicts of interest declared and no objection to the jurisdiction of the Planning Commission to hear the matter. The public hearing was opened at 8:51 pm. Planning Director Tony Baron reviewed the staff report.

The applicant's representative, Ron Reel was present and available for questions. No members of the public spoke in opposition and no participant requested additional time to submit materials. The public hearing was closed at 8:56 pm.

The Commission deliberated on the matter. **Motion made by Commissioner Hartzell to authorize a Conditional Use Permit to operate a Short Term Rental facility at 96414 Dawson Road, a 1.32 acre parcel located on Assessor's Map No. 40-14-36-BB; Tax Lot 03000, zoned R-1-6, based on the findings and conclusions stated in the staff report and subject to the Conditions of Approval; motion seconded by Commissioner Wulkowicz. By a 4-0 vote the motion carried.**

Motion made Commissioner Wulkowicz to approve the Final Order as presented; motion seconded by Commissioner McMahan. By a 4-0 vote the motion carried.

5.4 In the matter of **File No. M3-1-18**, a request for a partition to divide a 0.79 acre parcel into three (3) parcels; located at 331 Mill Beach Road; Assessor's Map 41-13-06CA, Tax Lot 1501; R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) zoned R-1-6.

There was no ex parte contact, bias, personal interest, or conflicts of interest declared and no objection to the jurisdiction of the Planning Commission to hear the matter. The public hearing was opened at 8:58 pm. Planning Director Tony Baron reviewed the staff report. Conditions of Approval included a DIA requiring street improvements when Byrtus Place is improved.

Tamara Townsend, 329 Mill Beach Road, Brookings is a neighboring property owner and objects to the partition. She believes it does not keep with the standards of the neighborhood and allowing two flag lots would cause crowding and be an inefficient use of the property since 25% of the land will be used for driveways. The property is accessed on a one lane private driveway used by the four residences and believes traffic would double, increasing the risk of accidents. Emergency vehicles have no turnaround and the heavier road use would cause deterioration faster. The neighbors pay to maintain, repair and reslurry the current driveway. The home and property are currently in poor condition and submitted photos for the record. If partition approved, requested single story buildings and 8' block fences on property lines. Requested Planning Commission postpone decision and change planning code.

Vicki Theriault, 1107 Rowland Lane, Brookings resides in the neighborhood and did not believe the flag lot parcels fit in with the other residences.

Pamela Stallings, 333 Mill Beach Road, Brookings did not believe that two flag lots were feasible and expressed concern about the road and the damage that the construction would cause. Believes that vehicles using and turning around in the median area would cause water pipes/meters to break. Requested the impact on the driveway be inspected.

Angie Christianson, 332 Mill Beach Road, Brookings expressed concern about the waterline pipes and damage that could occur during construction.

Dave Scott, Applicant – 98700 Woodriff Lane, Brookings advised that the property had been a rental and left in bad shape. Advised that after the partition was approved in 2007 he did make improvements in the waterlines, but did not continue on with the project. He plans to develop the parcels appropriately with manufactured homes and keep the neighborhood nice.

No participant requested additional time to submit materials and the applicant did not request additional time for written rebuttal. The public hearing was closed at 8:56 pm.

The Commission deliberated on the matter. Commission explained they cannot require property owners to construct fences or restrict building heights. Buildings are built to zoning code requirements. **Motion made by Commissioner McMahan to authorize a partition to divide a 0.79 acre parcel into three (3) parcels; located at 331 Mill Beach Road; Assessor's Map 41-13-06CA, Tax Lot 1501; R-1-6 (Single Family Residential, 6,000 sq. ft. minimum lot size) zoned R-1-6; motion seconded by Commissioner Hunter. By a 4-0 vote the motion carried.**

Motion made Commissioner McMahan to approve the Final Order as presented; motion seconded by Commissioner Hartzell. By a 4-0 vote the motion carried.

MINUTES FOR APPROVAL

6.1 Minutes of regular Planning Commission meeting of July 10, 2018. **Motion made by Commissioner McMahan to approve the minutes of July 10, 2018 as presented; motion seconded by Commissioner Wulkowicz. Commissioner Hartzell did not attend the meeting. The remaining three Commissioners attended the meeting and by a 3-0 vote the motion carried.**

- 6.2 Minutes of regular Planning Commission meeting of August 7, 2018 **Motion made by Commissioner McMahan to approve the minutes of August 7, 2018 as presented; motion seconded by Commissioner Hartzell. By a 4-0 vote the motion carried.**

UNSCHEDULED PUBLIC APPEARANCES - None

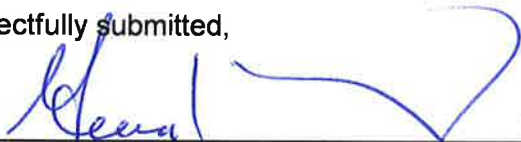
REPORT FROM THE PLANNING STAFF - None

COMMISSION FINAL COMMENTS - None

ADJOURNMENT

Vice Chair Wulkowicz adjourned the meeting at 9:48 pm.

Respectfully submitted,



Gerald Wulkowicz, Brookings Planning Commissioner
Approved at the January 8, 2019 meeting

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 5 MONTHS ENDING NOVEMBER 30, 2018

GENERAL FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
TAXES	3,104,993.00	2,356,268.08	2,530,299.62	574,693.38	81.5
LICENSES AND PERMITS	117,000.00	15,581.44	60,970.25	56,029.75	52.1
INTERGOVERNMENTAL	258,000.00	9,667.89	37,518.07	220,481.93	14.5
CHARGES FOR SERVICES	172,000.00	5,397.00	280,256.26	(108,256.26)	162.9
OTHER REVENUE	223,383.00	26,334.78	105,509.16	117,873.84	47.2
TRANSFERS IN	705,572.00	.00	.00	705,572.00	.0
	<u>4,580,948.00</u>	<u>2,413,249.19</u>	<u>3,014,553.36</u>	<u>1,566,394.64</u>	<u>65.8</u>
<u>EXPENDITURES</u>					
JUDICIAL:					
PERSONAL SERVICES	27,896.00	2,109.53	11,292.41	16,603.59	40.5
MATERIAL AND SERVICES	10,850.00	431.07	3,367.73	7,482.27	31.0
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>38,746.00</u>	<u>2,540.60</u>	<u>14,660.14</u>	<u>24,085.86</u>	<u>37.8</u>
LEGISLATIVE/ADMINISTRATION:					
PERSONAL SERVICES	253,613.00	12,212.49	112,313.82	141,299.18	44.3
MATERIAL AND SERVICES	114,500.00	23,604.80	49,704.76	64,795.24	43.4
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>368,113.00</u>	<u>35,817.29</u>	<u>162,018.58</u>	<u>206,094.42</u>	<u>44.0</u>
POLICE:					
PERSONAL SERVICES	2,219,583.00	154,027.49	864,156.11	1,355,426.89	38.9
MATERIAL AND SERVICES	187,800.00	9,583.28	63,119.57	124,680.43	33.6
CAPITAL OUTLAY	240,000.00	.00	.00	240,000.00	.0
DEBT SERVICE	63,807.00	4,452.31	23,225.43	40,581.57	36.4
TRANSFERS OUT	.00	.00	.00	.00	.0
	<u>2,711,190.00</u>	<u>168,063.08</u>	<u>950,501.11</u>	<u>1,760,688.89</u>	<u>35.1</u>
FIRE:					
PERSONAL SERVICES	191,291.00	28,508.64	106,401.17	84,889.83	55.6
MATERIAL AND SERVICES	97,000.00	4,560.34	30,722.75	66,277.25	31.7
CAPITAL OUTLAY	.00	.00	.00	.00	.0
DEBT SERVICE	30,579.00	30,579.01	30,579.01	(.01)	100.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	<u>318,870.00</u>	<u>63,647.99</u>	<u>167,702.93</u>	<u>151,167.07</u>	<u>52.6</u>

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 5 MONTHS ENDING NOVEMBER 30, 2018

GENERAL FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
PLANNING AND BUILDING:					
PERSONAL SERVICES	180,315.00	13,188.37	68,435.03	111,879.97	38.0
MATERIAL AND SERVICES	90,800.00	4,433.72	12,973.00	77,827.00	14.3
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	271,115.00	17,622.09	81,408.03	189,706.97	30.0
PARKS & RECREATION:					
PERSONAL SERVICES	282,199.00	19,106.81	102,925.10	179,273.90	36.5
MATERIAL AND SERVICES	103,500.00	7,055.73	33,157.18	70,342.82	32.0
CAPITAL OUTLAY	.00	.00	117.00	(117.00)	.0
DEBT SERVICE	48,383.00	4,031.88	20,159.40	28,223.60	41.7
TRANSFERS OUT	.00	.00	.00	.00	.0
	434,082.00	30,194.42	156,358.68	277,723.32	36.0
FINANCE AND HUMAN RESOURCES:					
PERSONAL SERVICES	226,445.00	17,657.83	87,640.79	138,804.21	38.7
MATERIAL AND SERVICES	33,700.00	1,670.11	17,101.82	16,598.18	50.8
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	260,145.00	19,327.94	104,742.61	155,402.39	40.3
SWIMMING POOL:					
PERSONAL SERVICES	62,187.00	.00	55,849.18	6,337.82	89.8
MATERIAL AND SERVICES	39,000.00	1,137.33	17,743.02	21,256.98	45.5
CAPITAL OUTLAY	2,500.00	.00	.00	2,500.00	.0
	103,687.00	1,137.33	73,592.20	30,094.80	71.0
NON-DEPARTMENTAL:					
MATERIAL AND SERVICES	148,000.00	19,892.90	59,574.07	88,425.93	40.3
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	358,907.00	.00	.00	358,907.00	.0
CONTINGENCIES AND RESERVES	628,093.00	.00	.00	628,093.00	.0
	1,135,000.00	19,892.90	59,574.07	1,075,425.93	5.3
	5,640,948.00	358,243.64	1,770,558.35	3,870,389.65	31.4
	(1,060,000.00)	2,055,005.55	1,243,995.01	(2,303,995.01)	117.4

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 5 MONTHS ENDING NOVEMBER 30, 2018

STREET FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
INTERGOVERNMENTAL	520,000.00	43,247.91	241,134.46	278,865.54	46.4
OTHER REVENUE	14,650.00	172.00	3,861.50	10,788.50	26.4
TRANSFER IN	.00	.00	.00	.00	.0
	<u>534,650.00</u>	<u>43,419.91</u>	<u>244,995.96</u>	<u>289,654.04</u>	<u>45.8</u>
<u>EXPENDITURES</u>					
EXPENDITURES:					
PERSONAL SERVICES	205,076.00	16,318.43	84,851.96	120,224.04	41.4
MATERIAL AND SERVICES	207,000.00	7,500.25	62,040.14	144,959.86	30.0
CAPITAL OUTLAY	95,000.00	.00	798.43	94,201.57	.8
DEBT SERVICE	22,238.00	1,717.04	8,585.16	13,652.84	38.6
TRANSFERS OUT	46,612.00	.00	.00	46,612.00	.0
CONTINGENCIES AND RESERVES	118,724.00	.00	.00	118,724.00	.0
	<u>694,650.00</u>	<u>25,535.72</u>	<u>156,275.69</u>	<u>538,374.31</u>	<u>22.5</u>
	<u>694,650.00</u>	<u>25,535.72</u>	<u>156,275.69</u>	<u>538,374.31</u>	<u>22.5</u>
	<u>(160,000.00)</u>	<u>17,884.19</u>	<u>88,720.27</u>	<u>(248,720.27)</u>	<u>55.5</u>

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 5 MONTHS ENDING NOVEMBER 30, 2018

WATER FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
SOURCE 03	.00	.00	.00	.00	.0
CHARGES FOR SERVICES	1,661,000.00	125,788.22	862,287.97	798,712.03	51.9
OTHER INCOME	51,000.00	6,236.25	31,298.75	19,701.25	61.4
TRANSFERS IN	.00	.00	.00	.00	.0
	<u>1,712,000.00</u>	<u>132,024.47</u>	<u>893,586.72</u>	<u>818,413.28</u>	<u>52.2</u>
<u>EXPENDITURES</u>					
WATER DISTRIBUTION:					
PERSONAL SERVICES	400,962.00	29,660.61	167,778.89	233,183.11	41.8
MATERIAL AND SERVICES	198,400.00	9,258.95	63,563.73	134,836.27	32.0
CAPITAL OUTLAY	50,000.00	2,456.69	21,143.61	28,856.39	42.3
DEBT SERVICE	8,722.00	398.39	4,376.45	4,345.55	50.2
TRANSFERS OUT	24,000.00	.00	.00	24,000.00	.0
	<u>682,084.00</u>	<u>41,774.64</u>	<u>256,862.68</u>	<u>425,221.32</u>	<u>37.7</u>
WATER TREATMENT:					
PERSONAL SERVICES	30,424.00	1,454.92	8,004.88	22,419.12	26.3
MATERIAL AND SERVICES	462,925.00	37,703.61	167,913.78	295,011.22	36.3
CAPITAL OUTLAY	10,000.00	.00	.00	10,000.00	.0
DEBT SERVICE	6,389.00	398.39	4,376.45	2,012.55	68.5
TRANSFERS OUT	687,650.00	.00	.00	687,650.00	.0
CONTINGENCIES AND RESERVES	177,528.00	.00	.00	177,528.00	.0
	<u>1,374,916.00</u>	<u>39,556.92</u>	<u>180,295.11</u>	<u>1,194,620.89</u>	<u>13.1</u>
DEPARTMENT 24:					
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
	<u>2,057,000.00</u>	<u>81,331.56</u>	<u>437,157.79</u>	<u>1,619,842.21</u>	<u>21.3</u>
	<u>(345,000.00)</u>	<u>50,692.91</u>	<u>456,428.93</u>	<u>(801,428.93)</u>	<u>132.3</u>

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 5 MONTHS ENDING NOVEMBER 30, 2018

WASTEWATER FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
SOURCE 03	(4,500.00)	.00	.00	(4,500.00)	.0
CHARGES FOR SERVICES	3,183,300.00	263,583.30	1,342,319.88	1,840,980.12	42.2
OTHER REVENUE	15,000.00	.00	.00	15,000.00	.0
TRANSFER IN	.00	.00	.00	.00	.0
	<u>3,193,800.00</u>	<u>263,583.30</u>	<u>1,342,319.88</u>	<u>1,851,480.12</u>	<u>42.0</u>

EXPENDITURES

WASTEWATER COLLECTION:

PERSONAL SERVICES	570,336.00	42,334.78	223,424.42	346,911.58	39.2
MATERIAL AND SERVICES	250,200.00	4,670.84	46,035.69	204,164.31	18.4
CAPITAL OUTLAY	25,000.00	.00	9,100.00	15,900.00	36.4
DEBT SERVICE	8,722.00	398.39	4,376.45	4,345.55	50.2
TRANSFERS OUT	177,359.00	.00	.00	177,359.00	.0
	<u>1,031,617.00</u>	<u>47,404.01</u>	<u>282,936.56</u>	<u>748,680.44</u>	<u>27.4</u>

WASTEWATER TREATMENT:

PERSONAL SERVICES	39,878.00	2,183.50	11,995.87	27,882.13	30.1
MATERIAL AND SERVICES	895,225.00	72,946.96	314,914.66	580,310.34	35.2
CAPITAL OUTLAY	.00	.00	.00	.00	.0
DEBT SERVICE	6,389.00	398.39	4,376.45	2,012.55	68.5
TRANSFERS OUT	1,509,923.00	.00	.00	1,509,923.00	.0
CONTINGENCIES AND RESERVES	315,268.00	.00	.00	315,268.00	.0
	<u>2,766,683.00</u>	<u>75,528.85</u>	<u>331,286.98</u>	<u>2,435,396.02</u>	<u>12.0</u>
	<u>3,798,300.00</u>	<u>122,932.86</u>	<u>614,223.54</u>	<u>3,184,076.46</u>	<u>16.2</u>
	<u>(604,500.00)</u>	<u>140,650.44</u>	<u>728,096.34</u>	<u>(1,332,596.34)</u>	<u>120.5</u>

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 5 MONTHS ENDING NOVEMBER 30, 2018

URBAN RENEWAL AGENCY FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
TAXES	586,211.00	511,528.63	515,401.13	70,809.87	87.9
INTERGOVERNMENTAL	.00	.00	.00	.00	.0
OTHER REVENUE	2,000.00	2.95	3.18	1,996.82	.2
TRANSFERS IN	650,000.00	.00	.00	650,000.00	.0
	1,238,211.00	511,531.58	515,404.31	722,806.69	41.6
<u>EXPENDITURES</u>					
GENERAL:					
PERSONAL SERVICES	.00	.00	.00	.00	.0
MATERIAL AND SERVICES	35,000.00	3,220.00	3,296.02	31,703.98	9.4
CAPITAL OUTLAY	842,472.00	.00	.00	842,472.00	.0
DEBT SERVICE	.00	.00	.00	.00	.0
TRANSFERS OUT	450,739.00	.00	.00	450,739.00	.0
CONTINGENCIES AND RESERVES	.00	.00	.00	.00	.0
	1,328,211.00	3,220.00	3,296.02	1,324,914.98	.3
DEPARTMENT 20:					
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	.00	.00	.00	.00	.0
DEPARTMENT 22:					
MATERIAL AND SERVICES	.00	.00	.00	.00	.0
DEBT SERVICE	.00	.00	.00	.00	.0
	.00	.00	.00	.00	.0
DEPARTMENT 24:					
CONTINGENCIES AND RESERVES	.00	.00	.00	.00	.0
	.00	.00	.00	.00	.0
	1,328,211.00	3,220.00	3,296.02	1,324,914.98	.3
	(90,000.00)	508,311.58	512,108.29	(602,108.29)	569.0

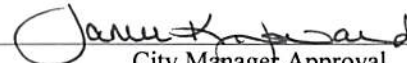
CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: January 14, 2019


Signature (submitted by)


Originating Dept: PWDS


City Manager Approval

Subject: Riparian Protection Overlay Zone Ordinance

Recommended Motion: Motion to adopt Ordinance 19-O-776, adding Chapter 17.74, Riparian Protection Overlay Zone to the Brookings Municipal Code and accompanying standards for the City of Brookings consistent with Oregon Statewide Goal 5, Riparian Safe Harbor Inventory Procedures and Goal 5, Safe Harbor Protections.

Financial Impact: None

Approved by Finance & Human Resources Director: 

Background/Discussion:

(See LCOG Memo)

Attachments:

- a. LCOG Memo – Brookings Riparian Protection Overlay Zone Ordinance Summary
- b. Riparian Protection Overlay Zone Ordinance
- c. Exhibit A - Findings – Riparian Protection Overlay Zone
- d. Exhibit B - Riparian Protection Overlay Zone - Proposed Code Language
- e. Exhibit C – Riparian Protection Overlay Zone Map
- f. DLCD Natural Resources Specialist Correspondence - Amanda Punton Email



MEMORANDUM

Meeting Date: January 14, 2019

To: City of Brookings City Council
From: Lane Council Governments (LCOG) Contact: Jacob Callister, Principal Planner
Contact Info: 541-682-4114, jcallister@lcog.org
RE: **Brookings Riparian Area Protection Ordinance Summary**

I. BACKGROUND

City of Brookings staff asked the Lane Council of Governments to investigate the development of a riparian protection ordinance for the City of Brookings. At the March 2018 Planning Commission meeting, LCOG presented some initial concepts and alternatives. LCOG also prepared a basic work scope for helping the City adopt a riparian protection ordinance.

At the March, 2018 Planning Commission, LCOG was given the direction to pursue a riparian ordinance consistent with the State of Oregon's Goal 5 riparian "Safe Harbor" approach for both inventorying riparian corridors and for protections applied to those riparian corridors. City staff and the Planning Commission noted that the approach seemed procedurally straightforward and appropriate for the City's perceived riparian dynamics and unaddressed comprehensive plan policies. The safe harbor approach leverages model ordinances and prescribed inventorying methods to ensure that City's can proceed with the State's approval (essentially ensuring LUBA support on an appeal).

LCOG has developed both a Goal 5 safe harbor riparian inventory for the City of Brookings, as well as Goal 5 safe harbor riparian standards. Both are included in the Ordinance presented.

LCOG presented the riparian ordinance to the Brookings Planning Commission at a November 6, 2018 hearing. The Planning Commission heard public testimony, closed the hearing and deliberated at that meeting. They passed a motion to recommend approval of the ordinance to the Brookings City Council. The Brookings Planning Commission motion also included the following directives to City of Brookings and LCOG staff:

- Staff shall ask Oregon Fish and Wildlife Division (ODFW) and Oregon Division of Forestry (ODF) to further investigate questions of location, water and fish presence for a number of specific inventoried waterways.
- Investigation into the definition of "water dependent" included in the proposed Safe Harbor Riparian Area Model Code:
 - **Water dependent:** *A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreate on, energy production, or source of water.*

These matters were investigated by staff and results are presented in Section III of the memo below.

II. RIPARIAN CORRIDOR INVENTORY

Under the safe harbor provision, significant riparian corridors are those areas including and adjacent to fish-bearing lakes and streams. The area of significance is determined by using a standard setback distance from all fish-bearing lakes and streams that appear on:

- a) Oregon Department of Forestry stream classification maps;
- b) United States Geological Service 7.5 minute quadrangle maps;
- c) *National Wetlands Inventory Maps*;
- d) Oregon Department of Fish and Wildlife maps indicating fish habitat;
- e) Federal Emergency Management Agency flood maps; and
- f) Aerial photographs.

The safe harbor inventory specifies that the significant riparian corridor will be defined by a boundary extending 50 feet from the banks of lakes and streams with an average annual stream flow less than 1,000 cubic feet per second. The safe harbor significant area boundary for streams with an average annual stream flow of 1,000 feet per second and greater is 75 feet from top of bank.

LCOG assembled and evaluated the inventory data noted above and worked in coordination with Oregon Division Fish and Wildlife (ODFW) staff stationed in Gold Beach to establish a draft Goal 5 Significant Riparian Corridor Inventory. These riparian corridors and waterways are mapped on the Draft Riparian Protection Overlay Zone Map (attached). They include the following waterways:

Less than 1,000 cubic feet per second (cfs), (riparian corridor extends 50 feet from the top of bank).

- | | |
|---------------------------|-----------------------|
| • <i>Lone Ranch Creek</i> | • <i>Shy Creek</i> |
| • <i>Duley Creek</i> | • <i>Harris Creek</i> |
| • <i>Ram Creek</i> | • <i>Eiler Creek</i> |
| • <i>Taylor Creek</i> | • <i>Ransom Creek</i> |
| • <i>Macklyn Creek</i> | • <i>Ferry Creek</i> |

More than 1,000 cubic feet per second (cfs), (riparian corridor extends 50 feet from the top of bank).

- *Chetco River*

III. FOLLOW-UP RESEARCH

In November, 2018, the Brookings Planning Commission passed a motion to recommend approval of the ordinance to the Brookings City Council. As noted, the Brookings Planning Commission motion also included the following directives to City of Brookings and LCOG staff:

- *Ask Oregon Fish and Wildlife Division (ODFW) and Oregon Division of Forestry (ODF) to investigate questions of location and water and fish presence for several mapped waterways.*

Steve Mazur from the Gold Beach regional office for ODFW provided a report on field investigations for Ferry Creek, Macklyn Creek, Ram Creek and an unnamed waterway emptying into Otter Cove. The resulting adjustments to the inventory map are as follows:

<i>Investigated Waterway</i>	<i>Results of ODFW/ODF Investigation</i>
<i>Ferry Creek</i>	<i>Confirmed Fish Bearing</i>
<i>Macklyn Creek</i>	<i>Fish Bearing Extent Reduced on inventory map</i>
<i>Ram Creek</i>	<i>Segments East of Highway 101 and within City Limits added to inventory map</i>
<i>Unnamed Otter Cove Creek</i>	<i>Changed to non-fish bearing (due to gradient)</i>

- *Investigation into the definition of “water related” included in the proposed Safe Harbor Riparian Area Model Code:*
 - **Water dependent:** *A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.*

At the November 6th Planning Commission hearing there was a County resident who expressed concern about the definition of “water dependent” uses. Because the proposed Riparian Ordinance is being pursued under the Goal 5 safe harbor approach, the definition (as with all definitions in the ordinance) is taken directly from the “Model Riparian Area Code.”

The “water dependent” definition comes directly out of DLCD’s goal and guideline definitions. https://www.oregon.gov/lcd/OP/Documents/compilation_of_statewide_planning_goals.pdf

The testimony expressed concern most specifically about “energy production” as a listed possible use under “water dependent uses.”

At the November 6th hearing, LCOG staff pointed out the following:

- The safe harbor approach is undermined through manipulation of the model code’s definitions.
- The purpose of the proposed riparian ordinance is to protect riparian resources. This proposal provides protections that don’t exist at all currently.
- It is important to preserve the flexibility to access water resources for potentially critical purposes. The riparian area model code has established that “energy production” could be one of those.

LCOG staff corresponded with DLCD and confirmed that City would be undermining their safe harbor approach by changing the State’s approved model riparian ordinance (including its definitions). Therefore staff recommends that the definition not be revised or manipulated in any way.

IV. A RIPARIAN OVERLAY ZONE

LCOG recommends that the City of Brookings adopt a Riparian Protection Overlay Zone as the mechanism for implementing the Riparian Protection Ordinance. The Riparian Protection Overlay Zone Map is illustrative of where riparian corridors are thought to exist. The Riparian Protection Area Overlay Zone language describes what properties are subject to the protections; how one determines where the protections specifically apply on a property, what the protections are specifically, and how to address exceptions and seek variances where and/or when appropriate.

The substance of the ordinance is from an Oregon Department of Land Conservation and Development (DLCD) approved Riparian Area Model Safe Harbor Ordinance.

V. NOTICE

Riparian Ordinance:

Notice was been sent to 200 separate property owners along or near the waterways identified. This notice included Measure 56 required language notifying property owners of the new zone and its potential impacts. The hearing (including any postponements or updates) was also published in the local paper and otherwise posted as required.

VI. PLANNING COMMISSION RECOMMENDATION TO CITY COUNCIL

At the November 6, 2018 Planning Commission hearing for this ordinance, the Brookings Planning Commission recommend approval of the Riparian Protection Overlay Zone Map and associated standards as reflected in the proposed ordinance – along with any proposed changes that emerged through the follow-up research described in Section III.

ATTACHMENTS

- Packet A: Draft Riparian Protection Overlay Zone Ordinance
- Correspondence with DLCD

IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON
ORDINANCE 19-O-776

IN THE MATTER OF ORDINANCE 19-O-776, AN ORDINANCE ADDING CHAPTER 17.74, RIPARIAN PROTECTION OVERLAY ZONE, TO THE BROOKINGS MUNICIPAL CODE AND ACCOMPANYING STANDARDS FOR THE CITY OF BROOKINGS CONSISTENT WITH OREGON STATEWIDE PLANNING GOAL 5, RIPARIAN SAFE HARBOR INVENTORY PROCEDURES AND GOAL 5 SAFE HARBOR PROTECTIONS

Sections:

- Section 1. Ordinance identified.
- Section 2. Add Chapter 17.74, Riparian Protection Overlay Zone
- Section 3. Adopt Findings of Fact
- Section 4. Severability

WHEREAS, the City of Brookings City Council, through enactment of Ordinance 19-O-776, has adopted the Riparian Protection Overlay Zone Map (Exhibit C).

WHEREAS, the City of Brookings City Council, through enactment of Ordinance 19-O-776, has adopted the Riparian Protection Overlay Zone Code Amendments (Exhibit B).

WHEREAS, the City of Brookings Planning Commission reviewed the proposal on November 6, 2018 at a Public Hearing, and recommended approval of the proposed Development Code; and

WHEREAS, evidence exists within the record (Exhibit A) indicating that the proposal meets the requirements of the City of Brookings Comprehensive Plan and the requirements of applicable state and local law, including consistency with Oregon's Statewide Planning Goals; and

WHEREAS, the City of Brookings City Council has conducted a public hearing on January 14, 2019 and is now ready to take action;

NOW THEREFORE, the City of Brookings ordains as follows:

Section 1. The City of Brookings City Council adopts the Code Amendment, as set forth in Exhibits B and C as "Chapter 17.74 Riparian Protection (RP) Overlay Zone" of the Brookings Municipal Code.

Section 2. The City of Brookings City Council adopts the Findings of Fact, attached as Exhibit A, which include findings addressing the consistency of the proposed amendments with the City of Brookings Comprehensive Plan and Oregon's Statewide Planning Goals.

Section 3. Severability. If any phrase, clause, or part of this Ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

First Reading: _____

Second Reading: _____

Passage: _____

Effective Date: _____

Signed by me in authentication of its passage this _____ day of _____ 2019.

ATTEST:

Mayor Jake Pieper

City Recorder Janell Howard

Exhibit “A”

FINDINGS IN SUPPORT OF ADOPTING A RIPARIAN OVERLAY ZONE WITH AN ACCOMPANYING ORDINANCE CONSISTENT WITH GOAL 5 SAFE HARBOR

The proposed Ordinance to the City of Brookings Land Development Code (Title 17), to add an Overlay Zone “Riparian Protection Overlay Zone” including accompanying zoning code procedures in conformance with the following Statewide Planning Goals and Comprehensive Plan Policies:

CONSISTENCY WITH CITY OF BROOKINGS LEGISLATIVE AMENDMENT PROCEDURE

17.140.010 Procedure.

The Brookings comprehensive plan and land development code may be amended by adopting revisions to reflect changes in the law, clarify language or procedures, correct mistakes, or to reflect changing community conditions. Amendments to the text follow legislative procedures.

17.140.020 Proposed amendments.

A. An amendment to the text of the comprehensive plan or land development code may be proposed as a legislative hearing by the city council, planning commission, planning director, or an individual.

FINDINGS: The proposal is consistent with these criteria following a legislative adoption process and originated by the City.

17.140.050 Qualified comprehensive plan map and/or zone change.

A. When considering a comprehensive plan map and/or zone change, the planning commission and city council may qualify, or condition, a zone change such that:

- 1. The property may not be utilized for all the uses ordinarily permitted in a particular zone; or*
- 2. The development of the site must conform to certain specified standards; or*
- 3. Any combination of the above.*

B. A qualified zone change shall be dependent on findings of fact including but not limited to the following:

- 1. Such limitations are deemed necessary to protect the best interests and ensure compatibility with the surrounding property or neighborhood; or*
- 2. Such limitations are deemed necessary to protect public safety and the city's best interests and/or infrastructure; or*
- 3. Such limitations are deemed necessary to prevent or mitigate potential adverse environmental effects. [Ord. 09-O-631 § 2.]*

FINDINGS: The proposal is consistent with these criteria in that the proposal to adopt a Riparian Protection Overlay Zone implements numerous specific Comprehensive Plan policies in the City's best interests including preventing or mitigating adverse impacts to environmental effects or certain forms of development with riparian corridors.

17.140.060 Action by the planning commission.

A. Upon filing of said application for an amendment as described in BMC 17.140.030 or 17.140.040, the matter shall be referred to the planning commission and a public hearing shall be held on the matter for which notice shall be given as provided in Chapter 17.84 BMC.

B. In the case of a text amendment, the planning commission shall review the draft language and make any revisions that are considered necessary. The planning commission shall recommend approval, qualified approval, or denial to the city council.

C. In the case of a comprehensive plan/zone change amendment, the planning commission shall recommend the approval, approval with conditions, or denial of the application to the city council.

...

E. If the proposed zone change is for property containing a mobile home park, notice shall also be provided to tenants of such mobile home park. The commission may recommend an alternate zoning designation for the area under consideration. [Ord. 09-O-631 § 2; Ord. 96-O-446.BB § 7; Ord. 89-O-446 § 1. Formerly 17.140.040.]

17.140.070 Action by the city council.

A. Following the planning commission hearing and recommendation for a comprehensive plan/zone change, a hearing before city council shall be scheduled. Notice of said public hearing shall be given as provided in Chapter 17.84 BMC.

B. In the case of a text amendment, the council shall enact an ordinance approving or denying the amendment.

C. In the case of a zone change amendment, the council shall enact an ordinance to approve, approve with conditions, or deny the application.

...

E. To adopt an ordinance for a zone change, findings must be made, and adopted as a part of said ordinance, that are adequate to support the amendment proposal. The findings must be factual and must be supported by substantial evidence submitted into the record. It must be found that the amendment complies with and conforms to the comprehensive plan goals, policies, generalized land use map, and any applicable statewide planning goals. [Ord. 09-O-631 § 2; Ord. 96-O-446.BB § 7; Ord. 94-O-446.W § 2; Ord. 89-O-446 § 1. Formerly 17.140.050.]

FINDINGS: The City of Brookings staff and decision making bodies have prepared to and plan to follow the adoption procedure outlined in Sections 17.140.060 and 070. Hearings are scheduled and anticipated at both the commission and council level. With the Commission providing a recommendation to the Council.

CONSISTENCY WITH CITY OF BROOKINGS COMPREHENSIVE PLAN

LAND USE

Policy 1: The City will make all reasonable efforts to publicize planning issues and meetings where these issues will be discussed and decided upon.

Policy 3: In instances where public hearings are required, relative to this Plan, the Planning Commission and City Council will follow procedures established in the City's Zoning Ordinance. These bodies are responsible for considering the effects of a decision on the entire community and should not be swayed unduly by persons testifying for or against a particular course of action, but must place this input into its proper perspective and base the final decision on all information provided to them.

FINDINGS: The proposal is consistent with these criteria because the ordinance was developed in a public venue, has been properly noticed and is planned for hearing as required by the Brookings Land Development Code.

OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES

Fish and Wildlife Resources

...

An in-depth analysis of the fish and wildlife resources within and around the Urban Growth Boundary can be found in the Chetco River Estuary Plan (Goal 16) and Inventory section. Four streams within or partly within the city limits have been identified as fish bearing streams. These streams are— Chetco River, Ransom Creek, Harris Creek, and Shigh Creek. To protect the fishery within each of these streams, a Riparian Corridor will be established along each stream and protective provisions will be described in Section 96, Riparian Corridor Protection, of the city's Land Development Code.

...

Policy 1: It is the policy of the City of Brookings to protect natural and scenic resources by encouraging the conservation of ecologically and scientifically significant natural areas, scenic views and sites, historic areas, local energy sources, and mineral and aggregate resources.

Policy 5: It is the City's policy to protect the fish bearing streams within the city limits through the establishment of a riparian setback corridor along each.

DISCUSSION: The Comprehensive Plan mentions waterways identified by the Chetco River Estuary Plan. It does not include all of the waterways identified in the proposed Riparian Protection Overlay Zone. This is because several streams were identified as “fish-bearing” in the federal datasets required for the Goal 5 riparian safe harbor approach.

FINDINGS: The proposal is consistent with Policies 1 and 5 by proposing riparian protections on all fish-bearing streams and encouraging the conservation of ecologically and scientifically significant natural areas.

GOAL 6 AIR, WATER AND LAND RESOURCES QUALITY

Policy 2: It is the City's policy to ensure that waste and process discharge will not threaten to violate or violate applicable state statutes, rules or standards or degrade air, land and water areas needed for watersheds and their water quality.

Policy 4: If necessary, the City is willing to control or limit growth where appropriate to prevent degradation of air, land and water resources. It is also in the City's interest to conserve riparian vegetation and maintain adequate sewerage facilities in the City to preserve water quality.

FINDINGS: The proposal is consistent with these criteria because the *City of Brookings Riparian Protection Overlay Zone* includes protections aimed at providing buffers on riparian areas preserving critical vegetation which is proven to reduce pollutants and manage discharge and manage degradation of water resources.

GOAL 9 ECONOMY

Policy 1(c): Brookings will encourage compatible industrial uses to be located in appropriate areas throughout the community.

Policy 4(e): The City shall provide adequate industrial land for the development of new industrial uses.

FINDINGS: The Riparian Protection overlay Zone will contribute to the appropriate locating of compatible industrial uses but establishing a clearer awareness of the City's riparian corridors. The proposed Riparian Protection Overlay Zone is not found to threaten the City's ability to provide adequate industrial land for new industrial purposes.

GOAL 10 HOUSING

Policy 1: City shall not unduly restrict land development thereby artificially inflating the cost of both new and existing housing, but rather provide land in suitable quantities and encourage the construction of new residential units to meet increased demand.

Policy 4: City shall, through mapping and other means, provide, where known, general information relative to site development suitability.

FINDINGS: In the context of the the Policies mentioned throughout this staff report, the proposed Riparian Protection Overlay Zone is not found to unduly restrict land development or inflate costs of new and existing housing. The Riparian Protection overlay Zone establishes a clearer awareness of site suitability by mapping the City's riparian corridors and providing clear and objective standards for those corridors.

GOAL 16 ESTUARINE RESOURCES

Implementation:

The management units will implement the policies of the Curry County and Brookings comprehensive Plans, the Chetco Estuary Plan and the Oregon Estuary Classification System. Implementing

measures are set forth in Section 72, Marine Activities (MA) District, of the city's Land Development Code.

FINDINGS: The Chetco River is addressed substantially in the existing Marine Activities Overlay Zone. The proposed Overlay Zone is supportive of and consistent with the goals, policies and implementation concepts outlined in the Estuarine Resource element of the Brookings Comprehensive Plan.

GOAL 17 COASTAL SHORELANDS

Policy 7: It is City policy to require the maintenance and, where appropriate, restoration and enhancement of riparian vegetation consistent with water dependent uses.

FINDINGS: The Chetco River is addressed substantially in the existing Marine Activities Overlay Zone. The proposed Overlay Zone is supportive of and consistent with the goals, policies and implementation concepts outlined in the Coastal Shorelands element of the Brookings Comprehensive Plan.

CONSISTENCY WITH STATEWIDE PLANNING GOALS

GOAL 1: CITIZEN INVOLVEMENT: TO DEVELOP A CITIZEN INVOLVEMENT PROGRAM THAT INSURES THE OPPORTUNITY FOR CITIZENS TO BE INVOLVED IN ALL PHASES OF THE PLANNING PROCESS.

FINDINGS: The proposed amendment has been discussed in two public decision maker work sessions (In April and in September, 2018). Notice has been provided to all property owners determined to likely be within the “riparian corridors” addressed in the Ordinance. The notice sent was consistent with Measure 56 requirements. The hearings for both Planning Commission and City Council will be announced and published consistent with local requirements. Two hearings are open to the public and comments are incorporated into the final findings.

GOAL 2: LAND USE PLANNING: TO ESTABLISH A LAND USE PLANNING PROCESS AND POLICY FRAMEWORK AS A BASIS FOR ALL DECISIONS AND ACTIONS RELATED TO THE USE OF LAND AND TO ASSURE AN ADEQUATE FACTUAL BASE FOR SUCH DECISIONS AND ACTIONS.

FINDINGS: The proposed Amendment is consistent with Goal 2 because the Amendment followed the land use planning process established by the existing Comprehensive Plan, Development Code and State Statute.

GOAL 3: AGRICULTURAL LANDS: TO PRESERVE AND MAINTAIN AGRICULTURAL LANDS.

FINDINGS: This goal does not apply within adopted, acknowledged urban growth boundaries. The City of Brookings does not have any agricultural zoning districts.

GOAL 4: FOREST LANDS: TO CONSERVE FOREST LANDS BY MAINTAINING THE FOREST LAND BASE AND TO PROTECT THE STATE'S FOREST ECONOMY BY MAKING POSSIBLE ECONOMICALLY EFFICIENT FOREST PRACTICES THAT ASSURE THE CONTINUOUS GROWING AND HARVESTING OF FOREST TREES SPECIES AS THE LEADING USE ON FORESTLAND CONSISTENT WITH SOUND MANAGEMENT OF SOIL, AIR, WATER, AND

FISH AND WILDLIFE RESOURCES AND TO PROVIDE FOR RECREATIONAL OPPORTUNITIES AND AGRICULTURE.

FINDINGS: This goal does not apply within adopted, acknowledged urban growth boundaries. The City of Brookings does not have any forest zoning districts.

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES: TO PROTECT NATURAL RESOURCES AND CONSERVE SCENIC AND HISTORIC AREAS AND OPEN SPACES.

FINDINGS: The Ordinance is consistent with Goal 5 because the City utilized the Safe Harbor approach as defined in OAR 660-023-0020(2) and safe harbor criteria including but not limited to those set forth in OAR 660-023-0090(5), (8), 660-023-100(4)(b), and 660-023-110(4). The proposed Amendments adopt the Riparian Protection Overlay Zone by reference. and add the following Goal 5 goals, policies and action steps:

The following are findings demonstrating consistency with the State inventory and significance determination processes.

OAR 660-023- PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

660-023-0030

Inventory Process

(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:

- (a) Collect information about Goal 5 resource sites;*
- (b) Determine the adequacy of the information;*
- (c) Determine the significance of resource sites; and*
- (d) Adopt a list of significant resource sites.*

(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

- (a) Notify state and federal resource management agencies and request current resource information; and*
- (b) Consider other information submitted in the local process.*

(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The

information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:

(a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.

(b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.

(c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.

(4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:

(a) The quality, quantity, and location information;

(b) Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and

(c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.

(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(7) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.

(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.

(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:

(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and

(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.

...

660-023-0090

Riparian Corridors

...

(3) Local governments shall inventory and determine significant riparian corridors by following either the safe harbor methodology described in section (5) of this rule or the standard inventory process described in OAR 660-023-0030 as modified by the requirements in section (4) of this rule. The local government may divide the riparian corridor into a series of stream sections (or reaches) and regard these as individual resource sites.

(4) When following the standard inventory process in OAR 660-023-0030, local governments shall collect information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors. Local governments may postpone determination of the precise location of the riparian area on lands designated for farm

or forest use until receipt of applications for local permits for uses that would conflict with these resources. Local governments are encouraged, but not required, to conduct field investigations to verify the location, quality, and quantity of resources within the riparian corridor. At a minimum, local governments shall consult the following sources, where available, in order to inventory riparian corridors along rivers, lakes, and streams within the jurisdiction:

- (a) Oregon Department of Forestry stream classification maps;
- (b) United States Geological Service (USGS) 7.5-minute quadrangle maps;
- (c) National Wetlands Inventory maps;
- (d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;
- (e) Federal Emergency Management Agency (FEMA) flood maps; and
- (f) Aerial photographs

FINDINGS: The proposal is consistent with these criteria because the City of Brookings Riparian Protection Overlay Zone inventory is based upon the reference to the datasets noted above (Oregon Department of Forestry Stream Classification and Oregon Department of Fish and Wildlife data).

(5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

- (a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.
- (b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.
- (c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

FINDINGS: The proposal is consistent with these criteria because the City of Brookings Riparian Protection Overlay Zone which includes the City of Brookings Riparian Protection Overlay Map is based upon the appropriate buffer distance applied to fish-bearing streams in Brookings.

660-023-0050

Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

- (a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:

(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and

(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).

FINDINGS: The Amendment is consistent with these criteria because the City is *concurrently adopting* the Overlay Zone with amendments to the Brookings Land Development Code, establishing standards for Goal 5 Riparian Corridors in Brookings and has adopted standards that provide a level of protection in compliance with OAR 660-023-090.

660-023-0060: Notice and Land Owner Involvement

Local governments shall provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notification and involvement of landowners, citizens, and public agencies should occur at the earliest possible opportunity whenever a Goal 5 task is undertaken in the periodic review or plan amendment process. A local government shall comply with its acknowledged citizen involvement program, with statewide goal requirements for citizen involvement and coordination, and with other applicable procedures in statutes, rules, or local ordinances.

FINDINGS: Public meetings were conducted prior to the determination of or completion of the inventory. Adequate notice and hearings are in place to solicit public feedback and inquiry.

GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY: TO MAINTAIN AND IMPROVE THE QUALITY OF THE AIR, WATER, AND LAND RESOURCES OF THE STATE.

FINDINGS: The proposal is consistent with Goal 6 because the policies protecting riparian corridors restrict development within the riparian corridor (including any associated wetlands) and protect water quality functions by providing naturally occurring surface water storage and water quality impoundments.

GOAL 7 - AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS: TO PROTECT LIFE AND PROPERTY FROM NATURAL DISASTERS AND HAZARDS.

FINDINGS: The proposal is consistent with Goal 7 because the policies protecting riparian areas (and associated wetlands) improve flood storage capacity and limit development near stream banks and other areas of potential flooding.

GOAL 8 - RECREATIONAL NEEDS: TO SATISFY THE RECREATIONAL NEEDS OF THE CITIZENS OF THE STATE AND VISITORS AND, WHERE APPROPRIATE, TO PROVIDE FOR

THE SITING OF NECESSARY RECREATIONAL FACILITIES INCLUDING DESTINATION RESORTS.

FINDING: The proposal does not impact Goal 8 Recreation.

GOAL 9 - ECONOMIC DEVELOPMENT: TO PROVIDE ADEQUATE OPPORTUNITIES THROUGHOUT THE STATE FOR A VARIETY OF ECONOMIC ACTIVITIES VITAL TO THE HEALTH, WELFARE AND PROSPERITY OF OREGON'S CITIZENS.

FINDING: The proposed Amendments do not impact Goal 9.

GOAL 10 - HOUSING: TO PROVIDE FOR THE HOUSING NEEDS OF CITIZENS OF THE STATE.

FINDINGS: The proposed Amendment minimally affects portions of lands that may be available for new residential development in the City of Brookings. The City has an adequate supply of buildable residential land. The protection of the identified significant riparian areas will not impact the City's ability to provide an adequate supply of developable land. Therefore, the City concludes the proposed amendment does not substantially impact Goal 10.

GOAL 11 - PUBLIC FACILITIES AND SERVICES: TO PLAN AND DEVELOP A TIMELY, ORDERLY AND EFFICIENT ARRANGEMENT OF PUBLIC FACILITIES AND SERVICES TO SERVE AS A FRAMEWORK FOR URBAN AND RURAL DEVELOPMENT.

FINDINGS: The proposed Amendment is consistent with Goal 11 the protection of riparian corridors.

GOAL 12 – TRANSPORTATION: TO PROVIDE AND ENCOURAGE A SAFE, CONVENIENT AND ECONOMIC TRANSPORTATION SYSTEM.

FINDING: The proposed Amendments do not impact Goal 12.

GOAL 13 - ENERGY CONSERVATION: TO CONSERVE ENERGY.

FINDING: The proposed Amendments do not impact Goal 13.

GOAL 14: URBANIZATION: TO PROVIDE FOR AN ORDERLY AND EFFICIENT TRANSITION FROM RURAL TO URBAN USE.

FINDING: The proposed Amendments do not impact Goal 14.

GOAL 16: ESTUARINE RESOURCES

FINDING: The proposed Amendments are consistent with and directly promote Goal 16 by adding protections to the Chetco River and its Estuary.

GOAL 17: COASTAL SHORELANDS

FINDING: The proposed Amendments are consistent with and directly promote Goal 17 by adding protections to the riparian corridors within the City of Brookings – all of which terminate in the Pacific Ocean in or near Brookings.

Exhibit B

RIPARIAN PROTECTION OVERLAY ZONE CODE AMENDMENTS (RP) –

I. Purpose

The purpose of this ordinance is to protect and restore select water bodies in the City of Brookings and their associated riparian areas, thereby protecting and restoring the hydrologic, ecological and water quality functions these areas provide. Specifically, this ordinance is intended to protect habitat for fish and other aquatic life, protect habitat for wildlife, protect water quality for human uses and for aquatic life, control erosion and limit sedimentation, and reduce the effects of flooding. This ordinance attempts to meet these goals by excluding structures from areas adjacent to significant (fish-bearing) lakes and streams, and their associated wetlands, and by prohibiting vegetation removal or other alterations in those areas.

II. Definitions

Bankfull Stage: The two-year recurrence interval flood elevation.

Bioengineering: A method of erosion control and landscape restoration using live plants, such as willows.

Building Envelope: The land area, outside of all required setbacks, which is available for construction of a primary structure on a particular property.

Delineation: An analysis of a resource by a qualified professional that determines its boundary according to an approved methodology.

Excavation: Removal of organic or inorganic material (e.g. soil, sand, Sediment, muck) by human action.

Fill: Deposition of organic or inorganic material (e.g. soil, sand, sediment, muck, debris) by human action.

Fish Use: means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts. Fish use is determined through a combination of Oregon Department of Fish and Wildlife data and Oregon Department of Forestry Stream Classification maps.

Impervious surface: Any material which reduces or prevents absorption of storm water into previously undeveloped land.

Lawn: Grass or similar materials maintained as a ground cover of less than 6 inches in height, and generally managed to restrict the growth of shrubs and trees that inhibit the growth of grasses and forbs. For purposes of this ordinance, lawn is not considered native vegetation regardless of the species used.

Mitigation: A means of compensating for impacts to a riparian corridor including: restoration, creation, or enhancement. Some examples of riparian impact mitigation actions are replanting trees, removal of nuisance plants, and restoring streamside vegetation where it is disturbed or where it has been degraded due to past practices.

Native Vegetation: Plants identified as naturally occurring and historically found within the City of Brookings.

Natural Resource Enhancement: A modification of a natural resource to improve its quality.

Non-conforming: A structure or use that does not conform to the standards of this ordinance but has been in continuous existence from prior to the date of adoption of this ordinance up to the present. Non-conforming uses are not considered violations and are generally allowed to continue, although expansion, re-construction, or substantial improvements are regulated.

Net Loss: means a permanent loss of riparian functions provided by riparian structure and vegetation that results from a development action despite mitigation measures having been taken.

Off-Site Mitigation: Mitigation undertaken on a lot or parcel adjacent to or distant from the lot or parcel affected by a development action.

On-Site Mitigation: Mitigation undertaken within the lot or parcel affected by a development action.

Ordinary high water level: shall be regarded as the 2-year recurrent flood elevation.

Qualified Professional: An individual who has proven expertise and vocational experience in a given natural resource field. A qualified professional conducting a wetland delineation must have the delineation approved by the Oregon Division of State Lands.

Riparian area: The area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

Riparian corridor: A resource that includes the water areas, fish habitat, riparian areas, and adjacent wetland and upland areas that serve to protect water quality and the habitat functions of the water body.

Riparian corridor (significant): A fish-bearing riparian resource, as defined by Goal 5, that includes the water areas, fish habitat, riparian areas, and adjacent wetland and upland areas that serve to protect water quality and the habitat functions of the water body.

Shrubs: Woody vegetation usually greater than 3 feet but less than 20 feet tall, including multi-stemmed, bushy shrubs and small trees and saplings.

Stream: A channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

Structure: A building or other major improvement that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components that are not customarily regulated through zoning ordinances.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (a) Before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred.
- (b) For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
The term does not, however, include either:
 - (c) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
 - (d) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Top of Bank: A distinct break in slope between the stream bottom and the surrounding terrain which corresponds with the bankfull stage (the two-year recurrence interval flood elevation) of the stream.

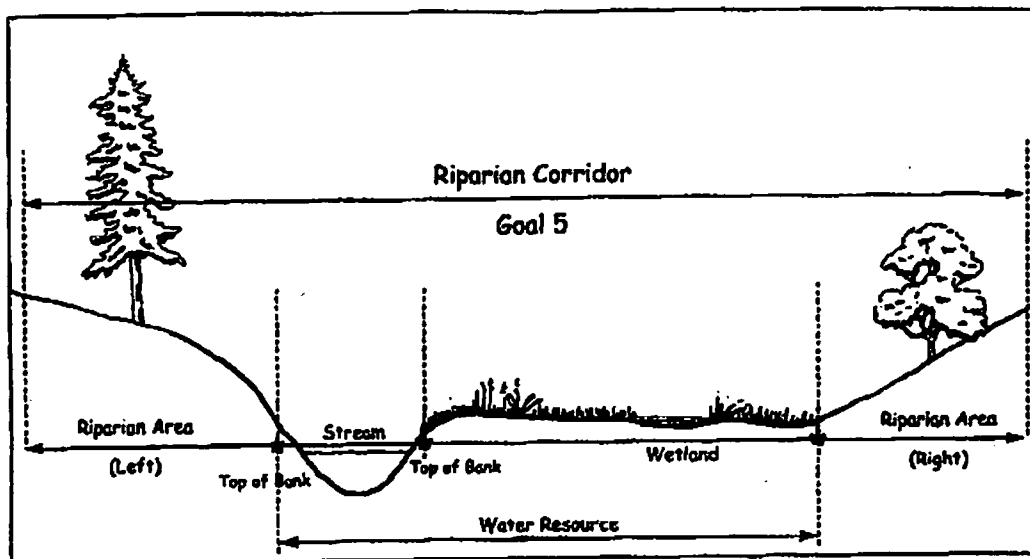


Figure 1: Cross section illustrating terms used in Statewide Planning Goal 5.

Source: *Urban Riparian Inventory and Assessment Guide*. Oregon Division of State Lands 1998

State and Federal Natural Resource Agency: Oregon Division of State Lands, Oregon Department of Fish and Wildlife, U.S. Army Corps of Engineers, U.S. Department of

Agriculture Natural Resources Conservation Service, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and Department of Environmental Quality.

Trees: A woody plant 5 inches or greater in diameter at breast height and 20 feet or taller.

Water dependent: A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

Water related: Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

Wetland: Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Based on the above definition, three major factors characterize a wetland: hydrology, substrate, and biota.

Wetland Boundary: The edges of a wetland as delineated by a qualified professional.

III. Applicability

(A). Affected Property

The procedures and requirements of the Riparian Protection (RP) Overlay Zone:

- (a) apply to any parcel designated as containing any portion of a riparian corridor as mapped in the City of Brookings Riparian Protection Overlay Zone Map;
- (b) apply in addition to the standards of the property's underlying zone, excepting where they contradict with a concurrent Marine Activity (MA) Zone designation;
- (c) supersede the property's underlying zone where the underlying zone does not provide the level of resource protection afforded by the RP Overlay Zone, excepting the Marine Activity (MA) Zone designation, which shall supersede the RP Overlay Zone.

IV. Riparian Corridors (Based on Goal 5 safe harbor inventory.)

The inventory of riparian corridors depicted on the Riparian Protection Overlay Zone Map specifies which streams and lakes are significant (fish-bearing). Based on the classification contained in this inventory, the following riparian corridor shall be established:

(A) Along all fish-bearing lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor shall extend 50 feet from the top of bank.

- *Lone Ranch Creek*
- *Duley Creek*
- *Ram Creek*
- *Taylor Creek*
- *Macklyn Creek*
- *Shy Creek*
- *Harris Creek*
- *Eiler Creek*
- *Ransom Creek*
- *Ferry Creek*

(B) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor shall extend 75 feet upland from the top of each bank.

- *The Chetco River*

(C) The measurement of distance to the riparian corridor boundary shall be from the top of bank. In areas where the top of the bank cannot be clearly determined, the riparian corridor boundary shall be measured from the ordinary high water level.

VI Activities Within the Riparian Corridor

(A) The permanent alteration of the riparian corridor by grading or by the placement of structures or impervious surfaces is prohibited, except for the following uses, provided they are designed to minimize intrusion into mapped riparian corridors, and no other options or locations are feasible:

(1) Streets, roads, and paths;

Public or private streets, driveways, or paths may be placed within a riparian corridor to access development activities if it is shown to the satisfaction of the reviewing authority that no other practicable method of access exists. If allowed, the following standards shall apply:

- i. To achieve minimum intrusion into the riparian corridor, design roads, driveways, and paths to be the minimum width necessary to allow for safe passage of vehicles and/or pedestrians consistent with the [Cite appropriate local standards for road and path construction];
- ii. Bridges, arched culverts, or box culverts with a natural bottom shall be used for crossing of a riparian corridor. The lower lip of any culvert must meet the channel bed at or below grade. The number of channel crossings shall be minimized through use of shared access for abutting lots and access through easements for adjacent lots;
- iii. Consider site plan elements that could facilitate access to potential new building sites and help reduce the need for subsequent encroachments into the riparian corridor. (A statement by the applicant that such elements have been considered shall satisfy this provision);

- iv. During construction, no stockpiling of fill materials, parking, or storage of equipment shall be allowed within the riparian corridor;
 - v. Erosion control measures, such as mulching, straw waddles, silt fences and biofilter bags, shall be used to reduce the likelihood of sediment and untreated stormwater entering surface water. [If local government has standards for erosion prevention and sediment control, replace this statement with one that coordinates with those standards.]
- (2) Drainage facilities, utilities, and irrigation pumps;
- Public and private utilities or drainage facilities may be placed within a Riparian corridor if it is shown to the satisfaction of the reviewing authority that no other practicable alternative exists. If allowed the following standards shall apply:
- i. The corridor necessary to construct utilities shall be the minimum width practical to minimize intrusion into the riparian corridor. Removal of trees and native vegetation shall be avoided unless absolutely necessary. The existing grade of the land shall be restored after construction. Native vegetation shall be used to restore the vegetative character of the construction corridor;
 - ii. No stockpiling of fill materials, parking, or storage of equipment shall be allowed within the Riparian corridor.
- (3) Water-related and water-dependent uses, except within the designated coastal shorelands boundary where alterations may be allowed only for water-dependent uses
- (4) Replacement of existing structures with structures in the same location that do not disturb additional surface area;
- (5) Non-conforming uses existing fully or partially within the riparian corridor may be expanded, provided the expansion does not occur within the significant riparian corridor. Substantial improvement of a non-conforming structure in the riparian corridor shall comply with the standards of this ordinance.
- (6) Shoreline stabilization and flood control structures that legally existed on the effective date of this ordinance may be maintained. Any expansion of existing structures or development of new structures shall be evaluated by the Public Works/Development Services Director (Director) and appropriate state natural resource agency staff. Such alteration of the significant riparian corridor shall be approved only if less-invasive or non-structural methods will not adequately meet the stabilization or flood control needs.
- (B) Removal of vegetation is prohibited, except for:
- (1) Removal of non-native vegetation and replacement with native plant species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, and shall maintain or exceed the density of the removed vegetation.

- (2) Removal of vegetation necessary for the development of approved water-related or water-dependents uses, except within the designated coastal shorelands boundary where removal may be allowed for only water-dependent uses. Vegetation removal shall be kept to the minimum necessary to allow the water-dependent or water-related use."
 - (3) Trees in danger of falling [as determined by a certified arborist] and thereby posing a hazard to life or property may be felled, following consultation and approval from the Director. The Director may require these trees, once felled, to be left in place in the riparian corridor.
 - (4) Existing lawn within the significant riparian corridor may be maintained, but not expanded to further intrude into the resource.
- (C) Exceptions: The following activities are not required to meet the standards of this section.
- (1) Commercial forest practices regulated by the Oregon Forest Practices Act.
 - (2) Temporary emergency procedures necessary for the safety or protection of property.
 - (3) Normal and accepted farming practices other than the construction of buildings, structures, or paved roads.
 - (4) All water-related and water-dependent uses as described respectively in Section II of this Ordinance.

Note to planners on herbicide use in riparian areas – Local governments are not allowed to regulate pesticide/herbicide use, but can provide information to improve compliance with state and federal law See list of pesticides prohibited for use near salmon bearing streams: <http://www.pesticide.org/finalproductslist.pdf>

VII. Alteration Requiring Mitigation

- (A) Permanent alteration of the riparian corridor by placement of a structure or impervious surface not provided for under Section IV may be allowed adjacent to streams with over 1,000 cfs average annual flow and having a riparian corridor as established under Section II of this ordinance under the following conditions
 - (1) Placement of fill, impervious services (including structures), and removal of vegetation shall be limited to the minimum amount necessary to accommodate the use. Any vegetation removed in excess of this standard shall be non-native species, and the proposal shall specify replacement of that vegetation with native species.
 - (2) The applicant shall provide sufficient information regarding the proposed development, the impacts to resources in the riparian corridor, and mitigation measures to allow the Director, in consultation with the Oregon Department of Fish and Wildlife, to determine if the proposal will provide equal or better protection of riparian resources within the designated corridor. This can happen through the provision of additional buffer along other portions of the reach, or enhancement and restoration of degraded riparian resources within the designated corridor. This information shall include at least a plot plan showing

the top of bank, the extent of development within the significant riparian corridor, uses that are proposed to occur in association with the development, the extent of vegetation removal proposed, characteristics of the existing vegetation (types, density), proposed riparian enhancement or restoration measures, proposed alterations of topography or drainage patterns, and existing uses on the property.

- (3) Proposals for development activities within the riparian corridor permitted under this section shall be subject to review by the Oregon Department of Fish and Wildlife (ODFW), according to OAR 635-415, the Fish and Wildlife Habitat Mitigation Policy. Proposed alterations of the riparian corridor shall result in at least no net loss of riparian values or functions.
- (4) In no case shall a structure or impervious surface intrude more than 37.5 feet into the riparian corridor as measured from the Riparian area boundary established under Section II of this ordinance.

VIII. Agency Review

Decisions made by the City of Brookings under this ordinance do not supersede the authority of the state or federal agencies which may regulate or have an interest in the activity in question. It is the responsibility of the landowner to ensure that any other necessary state or federal permits or clearances are obtained. In particular, state and federal mitigation requirements for impacts associated with approved water-related or water-dependent uses may still be required.

IX. Natural Resource Enhancement

Enhancement of natural resources, such as riparian enhancement, in-channel habitat improvements, non-native plant control, and similar projects which propose to improve or maintain the quality of a riparian resource is encouraged; however, no enhancement activity requiring the excavation or filling of material in a wetland shall be allowed unless all applicable State and Federal wetland permits have been granted.

X. Variance

In cases where the limitations on activities within the significant riparian corridor unduly restricts the development of a lot or parcel legally created before the effective date of this ordinance, a property owner may request a variance. Granting of a variance requires findings that:

- (A) The proposed development represents a reasonable and legal use of the lot or parcel, considering the zoning;
- (B) Strict adherence to the applicable standards of the Riparian Protection Overlay would effectively preclude a use of the parcel that could be reasonably expected to occur in similarly zoned parcels; and
- (C) The property owner would be precluded a substantial property right enjoyed by the majority of landowners in the vicinity.

- (D) The variance is the minimum necessary to retain a use of the property.
- (E) Granting the variance will not be materially detrimental to the public welfare or be injurious to property or improvements in the neighborhood of the premises.
- (F) The variance will be in general harmony with the intent and purpose of this ordinance, and will not adversely affect any officially adopted comprehensive plan provision.

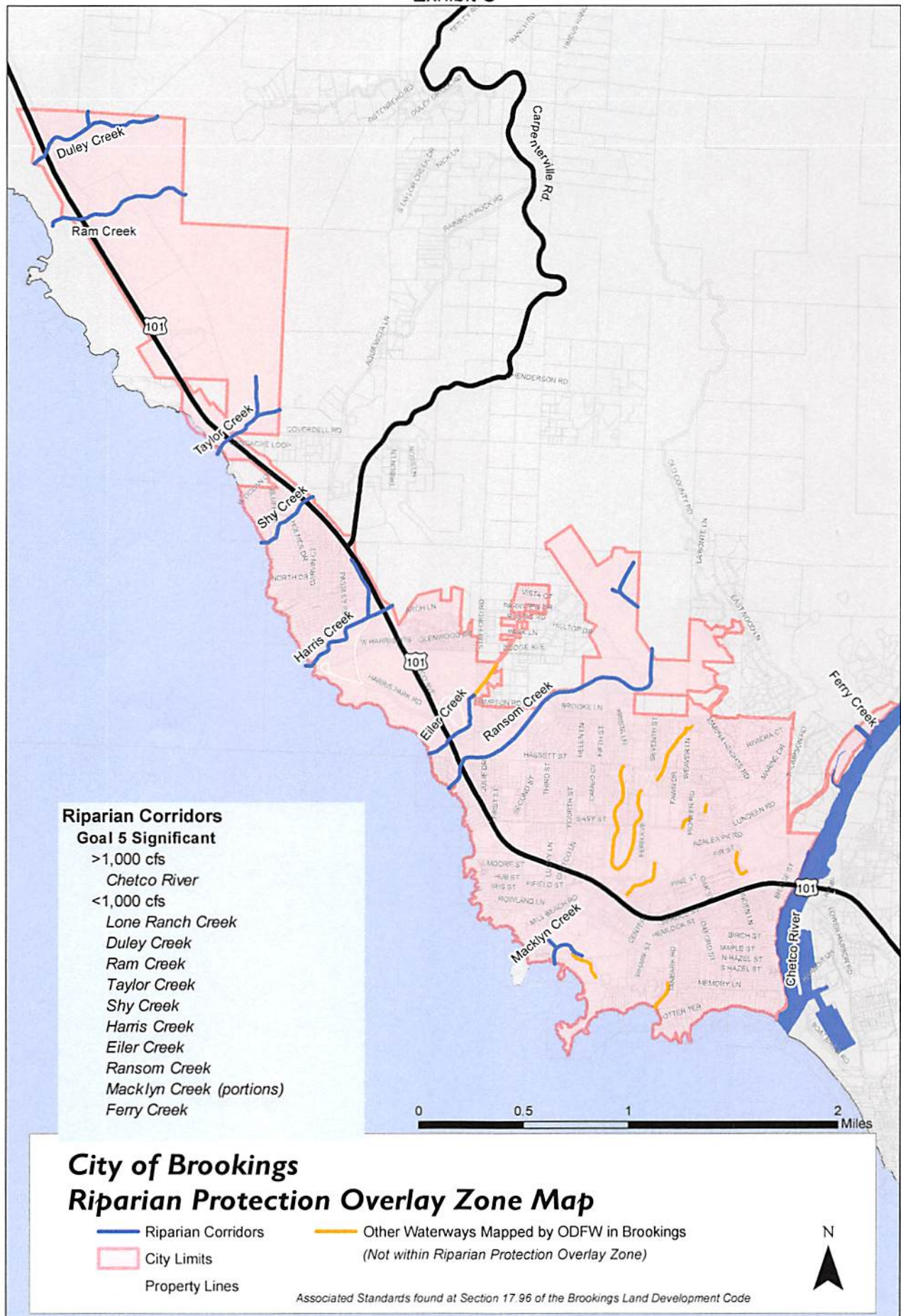
XI. Plan Amendment Option

Any owner of property affected by the Riparian Protection Overlay Zone within the Goal 5 planning area, as designated in the comprehensive plan, may apply for a quasi-judicial comprehensive plan amendment. This amendment must be based on a specific development proposal. A change in the boundary of the Riparian Protection Overlay Zone or a change in the allowed uses within a given reach of the Riparian Protection Resource must be adopted through a plan amendment process. To amend the program to protect the riparian resource, which specifies uses allowed in the zone, the applicant shall demonstrate that such an amendment is justified by completing an Environmental, Social, Economic and Energy (ESEE) consequences analysis prepared in accordance with OAR 660-23-040. If the application is approved, then the revised inventory and/or the ESEE analysis shall be incorporated by reference into the City of Brookings Comprehensive Plan, and the City of Brookings Riparian Protection Overlay Zone Map.

Plan amendment applications shall adhere to the following requirements:

- (A) The ESEE analysis must demonstrate to the ultimate satisfaction of the City of Brookings City Council that the adverse ESEE consequences of not allowing the conflicting use are sufficient to justify the loss, or partial loss, of the resource;
- (B) The ESEE analysis must demonstrate why the use cannot be located on buildable land outside of the riparian corridor and that no other sites within the City of Brookings that can meet the specific needs of the proposed use;
- (C) Proposed amendments to the riparian corridor inventory shall be prepared by a qualified professional experienced in the execution of such inventories, with review by ODFW and DLCD;
- (D) ESEE analyses shall be prepared by a qualified professional experienced in the preparation of Goal 5 ESEE analyses, with review by DLCD.

Exhibit C



CALLISTER Jacob (LCOG)

From: Punton, Amanda <amanda.punton@state.or.us>
Sent: Wednesday, January 02, 2019 12:39 PM
To: CALLISTER Jacob (LCOG)
Subject: RE: Quick question on Water Dependent definition -- Brookings Riparian Ordinance adoption

Hi Jake. I am happy on this new year and hope you are as well.

The concept of exempting water dependent uses from development restrictions along waterways is also imbedded in Goal 17, so I expect Brookings has experience with applying the definition. Your point, that adding Goal 5 protection does not newly enable development of a water dependent use, is a good one. Ultimately it is the city's decision whether or not they want to use the Goal 5 standard process to be more restrictive than the safe harbor protections. As you know, they can make decisions on a reach by reach basis.

I'm curious if the person you speak of is concerned about shipping uses that deliver an energy commodity, like an LNG terminal, or if she is concerned about hydro power generation. It might be helpful to point out that Goal 16 and 17 provisions supersede Goal 5 (OAR 660-23-0240(2)). This means that their new Goal 5 protections can't be applied along estuaries.



Amanda Punton
Natural Resource Specialist
Direct: 971-673-0961 | Main: 503-373-0050
www.oregon.gov/LCD

From: CALLISTER Jacob (LCOG) [<mailto:jcallister@lcog.org>]
Sent: Wednesday, January 02, 2019 10:50 AM
To: Punton, Amanda <apunton@dlcd.state.or.us>
Subject: Quick question on Water Dependent definition -- Brookings Riparian Ordinance adoption

Hello Amanda,

Happy New Year!

I think I mentioned to you that I am working on a riparian ordinance for the City of Brookings. It has gone before the Planning Commission and is going to the City Council on January 17th for final adoption. At the PC hearing there was a County resident who expressed concern about the definition of "water dependent" uses. The definition (as with all definitions in the ordinance) is from the "Model Riparian Code" that we applied to communities in the MCWRAP project:

Water dependent: *A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.*

I see that the definition of "water dependent" comes directly out of DLCD's [goal and guideline definitions](#).

The woman's concern was specifically about "energy production" though she expressed concern about "source of water" as well.

The City of Brookings is pursuing a safe harbor approach for the riparian protection. At the meeting I made an effort to explain that the aim of the riparian ordinance is primarily to protect riparian resources, providing protection that don't exist at all currently. I also pointed out that the safe harbor approach is undermined through over-manipulation of the model code. Finally I pointed out that it is important to preserve the ability to access water resources for critical purposes and that "energy production" could very-well be one of those. The Planning Commission's motion to recommend approval of the ordinance, included a charge to staff to investigate the water dependent language question/issue.

Could you weigh in on your perspective about concerns about removing "energy production" or any other use as part of the definition of water dependent uses?

That would be most helpful.

Cheers!

Jacob L.Callister
Principal Planner
Lane Council of Governments
541-682-4114

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: January 14, 2019



Signature (submitted by)

Originating Dept: PWDS


City Manager Approval

Subject: Code Revisions for Homeless Resources.

Recommended Motion: Information Only

Background/Discussion: Staff is seeking direction from Council on potential revisions to the Land Development Code in order to define services for homelessness as a use. Code revisions could allow for temporary (seasonal) shelters/housing for homeless individuals and families. To do so would require a Comprehensive Plan Map and/or Zone Change, creating an "Overlay Zone" within our existing zoning designations thereby allowing as an outright "Permitted Use" or "Conditional Use Permit", depending which zone is overlaid. It would also require defining the use in the code.

Conditional uses currently listed in our Land Development Code similar to proposed use are:

17.124.100 Churches, hospitals, other religious or charitable institutions

17.124.200 Community buildings, social halls, lodges, fraternal organizations and clubs in an "R" district

Staff proposes the creation of:

17.124.110 Community Service, Homeless Shelter, Homeless Resource Center

The City of North Bend recently approved a Conditional Use Permit in August of 2018 for a "Temporary Family Warming Center" as an accessory use to an existing church located on a residential zoned property.

Sample code language and revision processes described in attachments for further discussion.

Attachments:

- a. City of North Bend – Conditional Use Permit Hearing for a temporary warming center at College Park Community Church.
- b. Sample Code Language, Patterson California – "Emergency Shelter Overlay Zone"
- c. Mass Shelters and Housing Zoning Code Updates (page 13, 17), Portland Oregon
- d. Zoning for Shelter for Homeless, Menlo Park California
- e. Demographic & Housing Profiles for Curry County - Oregon Housing and Community Services



**NOTICE OF FINAL
FINDINGS, CONCLUSIONS, AND DECISION
OF THE CITY OF NORTH BEND CITY COUNCIL ON
APPEAL OF PLANNING COMMISSION DECISION TO DENY
APPLICATION FOR CONDITIONAL USE PERMIT**

**CASE FILE: CUP 7-17, Church Emergency Warming Center
LOCATION: 2548 NEWMARK STREET**

CITY OF NORTH BEND

PUBLIC WORKS, P.O. BOX B, NORTH BEND, OR 97459, PHONE: (541) 756-8535, FAX: (541) 756-8544

cschnabel@northbendcity.org

The Planning Commission decision for this case was appealed to the City Council by the applicant, College Park Community Church.

The City Council designated a Hearing Officer to conduct the public hearing on appeal and to forward the City Council a recommendation on final decision. The Hearing Officer recommended to APPROVE the Appeal and APPROVE the Application on a temporary basis (i.e. with an expiration date of March 15, 2019). At their July 24, 2018 regular meeting, the City Council adopted the Hearing Officer's findings as presented in *City of North Bend Land Use Hearing Officer Analysis, Conclusions, and Recommendations to the City of North Bend City Council* ("Hearing Officer Recommendation") and attached additional conditions of approval to the conditional use permit.

I. GENERAL INFORMATION

Applicant:	Rich LaMar, Pastor on behalf of College Park Community Church 2548 Newmark Street North Bend, OR 97459
Owner:	Church of God North Bend P.O. Box 416 North Bend, OR 97459
Site Address:	2548 Newmark Street
Map/Tax Lot:	T25S R13W Section 21AB, Tax Lot 11300
Zoning:	R-T / R-6 (Residential)
Case Type:	CUP, Conditional Use Permit
Procedure:	Discretionary land use decision with appeal to the City Council

Proposal: Briefly, the applicant requests approval to modify the existing church use to include the "College Park Temporary Family Warming Center" that will operate periodically, through the night hours during inclement weather events, to provide accommodations for homeless families with children under 18, seniors, and handicapped individuals. The warming center will operate within the existing church building. No building modifications are proposed.

Findings: Attached hereto and incorporated herein by reference is the Hearing Officer Recommendation, **Exhibit A**.

Council recognizes the neighborhood has spoken forcefully against the conditional use. The issue is how the evidence is likely to be weighted by an adjudicating body. Relevant evidence can be stronger or weaker depending on factors like bias, documented support of assertions, etc.

The community provided a lot of general testimony regarding the homeless in and around the neighborhood, as well as concerns about nuisances and crime. The church says they implemented their aid programs *because* of the rise in the number of homeless in the area. The community says the church's aid program is *causing* the rise in the number of homeless in the area.

The church has the weight of constitutional and statutory religious freedom laws on its side of the scale. In contrast, there is little evidence providing a direct connection between any criminal activity and persons in the area because of the church. There was some general testimony about the increase in homeless-looking persons in the neighborhood, but little to no information about actual dates or numbers that could be used to definitively connect the church's aid program to that increase.

The above leaves the Council with the task of ensuring that the neighborhood is adequately protected by imposing conditions based upon the record of the Planning Commission and Appeal Hearing.

To further address compatibility concerns, the following recommended conditions shall be attached to those conditions recommended by the Hearing Officer:

24. Develop, adopt and submit for approval to the City of North Bend prior to operation, a detailed operations manual which provides protocols and procedures for the activation, operation and deactivation of the Warming Center. Including details for staffing and volunteer requirements and roles, operating procedures, communication flow, types of care provided, and information about community resources.
25. Operations shall only commence when it can be adequately staffed by trained church members. For purposes of this condition, adequately staffed means at least four trained (according to standards outlined in an approved and adopted facilities operation manual) church member volunteers composed of men and women who are on-site facilitating operation of the warming center during operating hours.
26. An enclosed outside space to the facility shall be provided to allow shelter guests to temporarily exit the facility outside during their stay.
27. Enclosed outside space shall be screened from view from adjacent property by a permanently maintained, sight-obscuring fence or wall no less than six feet high.
28. Each night the warming center is operated, staff shall maintain, in a readily available location (for fire department use), an up-to-date roster of occupants and staff spending the night. For purposes of this condition, a readily available location means posted on or near the entry door of the warming center and emailed to both the Fire Chief and the Assistant Fire Chief, one of whom is always on-duty on any given night. It is the responsibility of the church to continually verify city contact email addresses in advance of opening the warming center for use.

II. CITY COUNCIL CONCLUSIONS

Based on the above findings, the City of North Bend City Council concluded that the Conditional Use Permit (CUP 7-17) can be approved as recommended by the Hearing Officer subject to the above additional conditions of approval enumerated as 24 – 28.

III. CITY COUNCIL DECISION

The City Council hereby **ADOPTS** the findings and recommendation of the Hearing Officer **APPROVING** the Conditional Use Permit (CUP 7-17) on a temporary basis, with the following conditions of approval:

CONDITIONS OF APPROVAL:

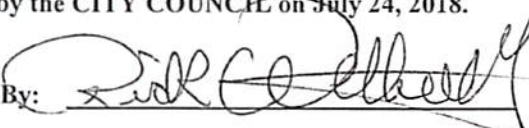
- 1) This Conditional Use Permit shall be issued on a temporary (one winter season) basis in order to evaluate the impacts that the warming center has on the community, and the CUP shall expire on March 15, 2019. On or before that date, the applicant shall apply to the Planning Department to renew the CUP.
- 2) Obtain a use occupancy permit for the accessory Church use, the “College Park Temporary Warming Center”, prior to opening for use. The use occupancy permit is a means by which staff verifies compliance.
- 3) Obtain a valid City of North Bend Access Permit, which addresses those access control measures recommended by the Engineering Department prior to issuance of a building and/or use occupancy permit.
- 4) Coordinate with the Engineering Department to establish a pavement marking maintenance plan for the existing parking facility such that the parking facility maintains compliance with Chapter 18.68 NBCC. The parking facility shall maintain the minimum number of off-street parking spaces required for the main Church use and twelve (12) of these off-street parking spaces shall be made available for the accessory warming center use.
- 5) Per Oregon State Fire Marshal (OSFM) regulations, temporary shelters, including the proposed “warming center,” shall only be operated a maximum of 90 days in any 12 month period.
- 6) Post in the fellowship hall and comply with the following maximum occupancy signs (which will be provided by the North Bend Fire Department): Entire fellowship hall – Max. Occup. Load, 201 Assembly, 94 dining; west fellowship hall – Max. Occup. Load, 84 Assembly, 39 dining; east hall – 117 Assembly, 55 dining, (when used as a) Warming Center – Max. Sleeping Occup. Load, 23 persons (including children).
- 7) Remove and refrain from using AT ANYTIME (with or without operation of the warming center), the “Use Other Door” bar placed over the panic hardware device on the south leaf of the east exit doors next to the Fellowship Hall (as said device renders the panic hardware inoperable).
- 8) DO NOT install “scissor gate” (or any other type of locking gate) on hallway entrances adjacent to the Fellowship Hall (as proposed on the submitted “Warning Center Layout”). A temporary non-attached, non-locked screening partition may be utilized, but ONLY when the warming center is in active operation AND conditional upon the church installing and maintaining the following sign(s) adjacent to hallway entrances wherein the temporary screens are to be used: “Temporary partitions allowed here ONLY when warming center is operating, by order of the North Bend Fire Chief.” Sign(s) to be provided by the North Bend Fire Department.
- 9) Refrain from frying or any form of oil-based cooking on the stove tops at ANYTIME (with or without operation of the warming center). Place sign in the kitchen the above stoves which reads: “Stoves for warming purposes only – NOT for frying or oil-based cooking.” Sign to be provided by the North Bend Fire Department.

- 10) Install and maintain smoke and carbon monoxide detectors on the ceiling of both the east and west sections of the fellowship hall.
- 11) Utilizing the "Warming Center Layout " map, show the location of the smoke and carbon monoxide detectors, highlight the exit doors, and draw the exit pathways out of the building with arrows and post this "Emergency Evacuation Plan" on the walls of both the east and west sections of the fellowship hall.
- 12) Each night the warming center is operated, maintain, in a readily available location (for fire department use), an up-to-date roster of occupants spending the night.
- 13) Notify the North Bend Fire Chief in advance each time the church plans on opening and operating the warming center. Unannounced inspections by the North Bend Fire Department may be conducted and should be expected.
- 14) Place "EXIT" signs above the two southern exit doors to the fellowship hall. Signs shall be illuminated and have backup power or may have photo luminescent letters.
- 15) Remove and refrain from placing trash cans and the pew within the exit pathway adjacent to the fellowship hall.
- 16) Lighting on-site shall comply with "dark sky" standards and be properly shielded to prevent light pollution off-site, as such is prohibited in the NBCC18.68.060 (g) "Artificial lighting which may be provided shall be deflected so as not to shine directly into adjoining dwellings or other types of living units and so as not to create a hazard to the public use of a street."
- 17) Provide staff with evidence of having obtained all proper Coos County Environmental Health Department licensing and inspections prior to issuance of use occupancy permit.
- 18) Restrict the warming center clientele to families with children (under 18), with possible openings for senior citizens (over 65), and handicapped.
- 19) Maintain a list of homeless families/seniors who could be served at the warming center.
- 20) Make no public notification of open nights (no signs or public-address messages) and no warming center meals available to the public, except for those on the list who are staying at the warming center.
- 21) For individuals on-site who are not offered warming center services, provide van transportation to the Devereux Center, or other similar facility that provides services for homeless.
- 22) Operate the warming center only when NOAA predicts temperatures to be at 36° Fahrenheit or below, or when winds reach forty (40) miles per hour or greater.
- 23) Notify both City of North Bend Fire Department and Police Department on any night the warming center is open so that they will be prepared in the event a situation or emergency arises.
- 24) Develop, adopt and submit for approval to the City of North Bend prior to operation, a detailed operations manual which provides protocols and procedures for the activation, operation and deactivation of the Warming Center. Including details for staffing and volunteer requirements and roles, operating procedures, communication flow, types of care provided, and information about community resources.

- 25) Operations shall only commence when it can be adequately staffed by trained church members. For purposes of this condition, adequately staffed means at least four trained (according to standards outlined in an approved and adopted facilities operation manual) church member volunteers composed of men and women who are on-site facilitating operation of the warming center during operating hours.
- 26) An enclosed outside space to the facility shall be provided to allow shelter guests to temporarily exit the facility outside during their stay.
- 27) Enclosed outside space shall be screened from view from adjacent property by a permanently maintained, sight-obscuring fence or wall no less than six feet high.
- 28) Each night the warming center is operated, staff shall maintain, in a readily available location (for fire department use), an up-to-date roster of occupants and staff spending the night. For purposes of this condition, a readily available location means posted on or near the entry door of the warming center and emailed to both the Fire Chief and the Assistant Fire Chief, one of whom is always on-duty on any given night. It is the responsibility of the church to continually verify city contact email addresses in advance of opening the warming center for use.

City Administrator: Terence O'Connor
City Planner: Chelsea Schnabel
City Legal Counsel: Mike Stebbins; Jane Stebbins

These findings and conclusions were adopted by the CITY COUNCIL on July 24, 2018.

By: 

City of North Bend City Council
Rick Wetherell, Mayor

Date Final Decision Mailed: 8/3/18

Appeal of Decision. A decision is final and becomes effective the day the notice of decision is mailed (noted above). This decision by the City Council may be challenged by filing a "Notice of Intent to Appeal" with the State Land Use Board of Appeals ("LUBA") not later than 21 days of the date the decision is mailed, pursuant to ORS 197.620 and 197.830. Copies of the intent to appeal shall be provided to the local government and applicant. A fee is required, and the issue being appealed must have been raised by the close of the record and with sufficient specificity to afford the review body an opportunity to respond to the issue. For further information, contact LUBA at the Public Utility Commission Building, 550 Capitol Street NE, Salem, OR 97310 [Telephone: (503) 373-1265].

CITY OF NORTH BEND
LAND USE HEARING OFFICER
ANALYSIS, CONCLUSIONS, AND
RECOMMENDATIONS
TO THE CITY OF NORTH BEND CITY COUNCIL

CONDITIONAL USE PERMIT
(WARMING CENTER FOR HOMELESS PERSONS
AS AN ACCESSORY USE TO A CHURCH)

FILE NO. CUP 7-17; APP 1-18

ANDREW H. STAMP, P.C.
KRUSE-MERCANTILE PROFESSIONAL OFFICES, SUITE 16
4248 GALEWOOD STREET
LAKE OSWEGO, OR 97035

Exhibit A

I. Introductory Matters: Summary of Proposal, Process, & Scope of Review

A. Summary of Proposal and Procedural History.

The applicant has filed an application for a Conditional Use Permit (CUP) seeking to add a “Emergency Warming Center” as an accessory use to the existing Church located at 2548 Newmark Street. See Case File No. CUP 7-17. As initially proposed, the applicant sought to modify the existing College Park Community Church use to include an emergency warming center for the general homeless population that would operate between the hours of 8:00 p.m. and 8:00 a.m., only during certain extreme weather events. See “College Park Church Warming Center Plan,” Exhibit to Staff Report dated Dec. 5, 2017, (H.O. Packet, p. 24 of 177). Signs posted on the property would serve to notify the public of times when the warming center would be open. Light evening and morning meals would be served to anyone wishing to partake in the church’s ministry. Only 24 individuals would be allowed to stay and sleep at the warming center. Doors would close to users at midnight and re-open at 5:00 a.m. the following day.

The North Bend Planning Commission held the first public hearing on this application at their regular meeting on December 18, 2017. During the public hearing, Planning Commission heard from the public concerns relative to an *existing problem* related to homelessness and crime in the neighborhood. This public hearing was continued to allow the applicant the opportunity to revise the proposal, respond to and clarify issues relative to compatibility. See Staff Report dated December 5, 2017, minutes of the December 18, 2017 meeting, and Notice of Continuation dated December 19, 2017.

Staff received additional information from the applicant in support of compatibility. See “Clarification of Warming Center Proposal” (H.O. Packet, p. 81 of 177). As part of the revised plan, the applicant proposed significant revisions to the original plan, including:

- Restricting the guest list to families with children, senior citizens, and handicapped.
- Guest list to be developed by working with local agencies to work with homeless persons.
- No public notification of open nights (no signs or public address messages, etc).
- No possibility of “walk in” guests to be accepted.
- Transportation to Devereux Center if uninvited guests show up.
- No overnight parking on Church Property

The Planning Director recommended approval of the application with imposition of conditions.

The Planning Commission held a second public hearing on February 26, 2018, in which it considered the applicant’s revised proposal and additional evidence in support of compatibility.

However, the Planning Commission voted to deny Case File No. CUP 7-17, based on finding that “the proposal was not compatible with the adjacent neighborhood.”

On March 12, 2018, the applicant filed a Notice of Appeal to get further review of the Planning Commission’s decision to deny Case File No. CUP 7-17. In its Notice of Appeal, the applicant alleges that the Planning Commission was biased and made an improper decision when they found that compatibility requirements could not be met. The Notice of Appeal was timely, and a hearing was scheduled per NBCC 18.92.020. See Notice of Appeal dated March 12, 2018,

The review timeline for this application is as follows:

- November 22, 2017: Application submitted.
- November 27, 2017: Application deemed complete
- December 18, 2017: First Planning Commission hearing.
- February 2, 2018: Notice of Hearing sent.
- February 15, 2018: Staff Report issued.
- February 26, 2018: Second Planning Commission hearing (Continuance).
- March 19, 2018: Planning Commission Decision.
- March 1, 2018: City Mailed Public Notice of Decision
- March 12, 2018: Applicant files Appeal.
- March 27, 2018: City Council designates Hearings Officer as hearings body.
- April 23, 2018: Notice of Public Hearing sent to parties.
- April 24, 2018: Planning Director issued Staff report
- May 14, 2018: De Novo Public hearing before the Hearings Officer
- May 21, 2018: First Open Record Period Closed (Rebuttal Testimony)
- May 28, 2018: First Open Record Period Closed (Sur-rebuttal Testimony)
- June 1, 2018: Hearings Officer Recommendation issued.

B. Process.

This application is being processed as a quasi-judicial land use action. The City Council has determined that it would be in the best interest of all parties to have the appeal hearing presided over by an independent hearings officer. The hearings officer treated the evidentiary hearing held on May 14, 2018 as being *de-novo* in nature.

C. Scope of Review.

When addressing the criteria and considering evidence, the hearings officer used the standard of review required for land use decisions. The applicant has the burden to provide substantial evidence, supported by the record, to demonstrate that all approval standards are met.

In addition, where the ordinance provisions were ambiguous, the hearings officer applied the *PGE v. BOLI* methodology to arrive at what he believes to be the correct construction of the statute. *State v. Gaines*, 346 Or 160, 171–172, 206 P3d 1042 (2009). In so doing, the hearings officer attempted to rely, as much as possible, on past interpretation adopted by the City Council, while still making sure that the interpretation would be affirmed if appealed.

The hearings officer believes that the conclusions made herein would be affirmed if appealed. However, the City Council does not have to accept the legal or factual conclusions of the hearings officer. There are other possible factual conclusions that could be drawn from the evidence. The Council may weigh the evidence and draw its own conclusion from that evidence. The Council also has the authority to modify or overturn the hearings officer's recommended interpretations and reach different legal conclusions.

The standard by which Land Use Board of Appeals (LUBA) and the courts will review the Board's decision is also an important consideration. ORS 197.829(1) provides as follows:

197.829 Board to affirm certain local government interpretations. (1) The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

- (a) Is inconsistent with the express language of the comprehensive plan or land use regulation;***
- (b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;***
- (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or***
- (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements. (Emphasis added).***

The Oregon Supreme Court has construed ORS 197.829(1) to require LUBA and the courts to affirm a local government code interpretation of its own code if the interpretation is "plausible." *Siporen v. City of Medford*, 349 Or 247, 255, 243 P3d 776 (2010). That deferential standard of review applies only to interpretations of local law adopted by the governing body (as opposed to the interpretations made by lesser bodies such as planning staff, hearings officers or planning commissions). *Gage v. City of Portland*, 319 Or 308, 317, 877 P2d 1187 (1994). However, if the City Council adopts a hearings officer's proposed interpretations as its own, those interpretations will be subject to deference. *Derry v. Douglas County*, 132 Or App 386, 888 P2d 588 (1995).

LUBA and the courts are not required to give deference to a local government's interpretation of state law, or to code interpretations if the code standard at issue implements or

mimics state law.¹ In this case, no substantive aspect of the decision is controlled by state law, but some procedural aspects of the case are governed by state statute.

Oregon courts recognize that a governing body is not necessarily bound to decide a matter in the same manner as a previous governing body. In *Archdiocese of Portland v. Washington County*, 254 Or 77, 87-8, 458 P2d 682 (1969), the court stated:

“Implicit in the plaintiff’s contention is the assumption that the Board of County Commissioners of Washington County is bound by the action of previous Boards of County Commissioners in that county. This assumption is not sound. Each Board is entitled to make its own evaluation of the suitability of the use sought by an applicant. The existing Board is not required to perpetuate errors of its predecessors. Even if it were shown that the previous applications were granted by the present Board, there is nothing in the record to show that the conditions now existing also existed at the time the previous applications were granted.”

See also *Alexanderson v. Clackamas County*, 126 Or App 549, 869 P2d 873, *rev den*, 319 Or 150, 877 P2d 87 (1994); *Okeson v. Union County*, 10 Or LUBA 1, 2 (1983); *Reeder v. Clackamas County*, 20 Or LUBA 238 (1990); *BenjFran Development v. Metro Service Dist.*, 17 Or LUBA 30, 46-47 (1988); *S & J Builders v. City of Tigard*, 14 Or LUBA 708, 711-2 (1986).

Nonetheless, LUBA has stated, in dicta, that “[A]rbitrary and inconsistent interpretation of approval criteria in deciding applications for land use permits may provide a basis for remand. See *Friends of Bryant Woods Park v. City of Lake Oswego*, 26 Or LUBA 185, 191 (1993), *aff’d* 126 Or App 205, 868 P2d 24 (1994) (although local legislation may be susceptible of more than one interpretation, local government may not “arbitrarily * * * vary its interpretation”). Thus, it is generally accepted that a city must provide some reason for the change in the interpretation, and cannot arbitrarily flip-flop between interpretations from case to case. For example, when a local government determines that comprehensive plan objectives are mandatory approval standards in one case, it may not later determine that plan objectives are mere guidelines in a different case, *absent some explanation for the disparity*. *Welch v. City of Portland*, 28 Or LUBA 439, 448 (1994); *Smith v. Clackamas County*, 25 Or LUBA 568, 570 n.1 (1993).²

¹ *Forster v. Polk County*, 115 Or App 475, 478, 839 P2d 241 (1992); *Kenagy v. Benton County*, 115 Or App 131, 134, 838 P2d 1076 (1992); *Crosley v. Columbia County*, 65 Or LUBA 164 (2012)(LUBA does not give deference to the County’s interpretation of state law, or to its own code to the extent that those code provisions implement and mimic ORS 215.130(5)-(11)).

² Perhaps the most important limitations in this area is set forth in the case of *Holland v. Cannon Beach*, 154 Or App 450, 962 P2d 701 (1998). Under *Holland*, a County cannot conclude that a code standard or plan policy is inapplicable in an initial phase of a case, and then change its mind when the case comes back from LUBA on other issues.

Finally, it is important to note that LUBA has stated that there may be circumstances where a change in long-standing interpretations may require notice and an opportunity for comment. *Wicks v. City of Reedsport*, 29 Or LUBA 8, 19 (1995); *Heceta Water Dist. v. Lane County*, 24 Or LUBA 402, 419 (1993); *Buckman Community Assoc. v. City of Portland*, 36 Or LUBA 630, 638-9 (1999).

In summary, it is *possible* for the City Council to change the manner in which it (or a previous City Council) interpreted its code in past decisions. To be clear, however, the hearings officer does not recommend any interpretational changes at this time.

Nonetheless, if the City Council *is* inclined to change a past interpretation, the hearings officer recommends that the Board: (1) provide notice to the parties, and (2) hold a public hearing accepting comment and analysis from the parties on the issue or issues subject to the change.

II. Legal Analysis

In *Holland*, petitioner's subdivision application was denied by the city council on the basis that it did not comply with certain comprehensive plan provisions. On appeal to LUBA, the Board remanded the decision on the basis that the comprehensive plan provisions relied on to support the denial were not applicable to the application. On remand, the city council determined that the application must be denied because it did not comply with a provision in the zoning code related to slope and density. Unfortunately for the city, the city staff had in an earlier staff report concluded that that standard was not applicable, relying on advice from the city attorney. That interpretation had been adopted by the city council in its first decision. So essentially, the decision on remand reversed an earlier, unchallenged code interpretation in the same case.

Petitioner again appealed, and LUBA affirmed the city's new denial decision. Before the court of appeals, the city argued the earlier staff determination had no import, since the city council had made a different determination than had staff previously that the newly applied standard was in fact applicable. The city argued the council's interpretation of its own code was subject to *Clark* deference under ORS 197.829(1). The court of appeals rejected this argument, holding that because the city council had adopted the previous staff determination that the standard at issue was inapplicable, that the standard continues to be inapplicable during the pendency of the case, in order to comply with the "no changing of the goal posts" rule. See ORS 227.178(3).

Holland provides a caveat to the holdings of earlier decisions stating that there is no requirement that a local government's decision be consistent with past decision, and that the law only requires that the decision be correct when made. Compare *Okeson v. Union County*, 10 Or LUBA 1 (1983); *Halverson-Mason Corp. v. City of Depoe Bay*, 39 Or LUBA 193, 205 (2000). Under *Holland*, once a case comes back on remand from LUBA, any interpretations set forth in the earlier decision which were not appealed become binding on the local government.

However, *Holland* appears to have its own set of limits. See e.g., *Buckman Community Assoc. v. City of Portland*, 36 Or LUBA 630 (1999) (the rule advanced in *Holland* is limited to interpretations governing the same application); *Greer v. Josephine County*, 37 Or LUBA 261, 275 (1999) ("As construed in *Holland*, ORS 227.178(3) constrains a local government's ability to change interpretations regarding the applicability of its approval criteria, but we do not read *Holland* as constraining reinterpretations of the meaning of indisputably applicable standards.").

A. Procedural Issues.

1. Prejudgment Bias.

In its appeal, the applicant asserts that the Planning Commission was biased. The City has provided the applicant with a *de novo* hearing, which makes any potential bias issues related to the Planning Commission irrelevant. The hearings officer gives no weight to the Planning Commission's decision.

B. Substantive Issues.

BCC 18.24.010 RESIDENTIAL USES AND RESTRICTIONS.

In the R-T zone, the uses permitted outright, conditional uses and regulations concerning signs, lot size, yards, height of buildings and lot coverage shall be the same as those provided in the R-5 residential zone.

NBCC 18.16.020 CONDITIONAL USES PERMITTED.

A use permitted as a conditional use in an R-6 zone is permitted as a conditional use in an R-5 zone.

NBCC 18.12.020 CONDITIONAL USES PERMITTED.

In an R-6 zone, the following uses and their accessory uses are permitted when authorized in accordance with Chapter 18.60 NBCC: (1) A use permitted as a conditional use in an R-7 zone.

NBCC 18.08.020 CONDITIONAL USES PERMITTED.

In R-7 and R-10 zones, the following uses and their accessory uses are permitted when authorized in accordance with Chapter 18.60 NBCC: (1) Church.

NBCC 18.08.020 CONDITIONAL USES PERMITTED.

In R-7 and R-10 zones, the following uses and their accessory uses are permitted when authorized in accordance with Chapter 18.60 NBCC: (1) Church.

Hearings Officer's Findings. The property is split zoned: the south one-half of the subject property is zoned Residential Transition (R-T), while the north one-half of the subject property is zoned Residential (R-6).

Residential Transition (R-T) zone regulations mirror those regulations set forth in Chapter 18.16 NBCC for the Residential (R-5) zone district. The Residential (R-5) zone district allows those uses permitted outright and conditionally in the Residential (R-6) zone district.

Because the R-T Zone allows for those uses permitted outright and conditionally in the R-6 Zone, and because the property, and non-commercial use thereof, is within both the R-T and R-6 Zones, it follows that, in this case, those regulations set forth in Chapter 18.12 NBCC for the Residential (R-6) zone district govern the use of the subject property. The R-6 Zone allows uses conditionally permitted in an R-7 Zone. A church and its accessory uses are listed as a conditional use in the R-7 Zone.

This criterion is met.

NBCC 18.04.030 DEFINITIONS.

(1) "Accessory structure or use" means a structure or use incidental and subordinate to the main use of the property and which is located on the same lot with the main use. A home occupation is an accessory use.

Hearings Officer's Findings. As discussed above, a "church" and its accessory uses are listed as a conditional use. Nonetheless, determining what is a valid "accessory use" has historically been a vexing topic as it relates to churches. This is because churches receive special protections under the U.S. and Oregon Constitutions. The hearings officer would like to provide some background on this topic before addressing the specifics of this case.

Suffice it to say that this topic has a long history of litigation in American jurisprudence related to the regulation of churches from a land use perspective. As a result, many secondary sources address the topic. See e.g., Jeffrey F. Ghent, Annotation, *What Constitutes "Church," "Religious Use," or the Like within Zoning Ordinance*, 62 A.L.R.3d 197 (1975); *What Constitutes Accessory or Incidental Use of Religious or Educational Property Within Zoning Ordinance*, 11 A.L.R.4th 1084; 2 Rathkopf's *The Law of Zoning and Planning* § 29:29 (4th ed.); Kelli Stout, *Tent Cities and RLUIPA: How a New Religious-Land Use Issue Aggravates RLUIPA*, 41 Seton Hall L. Rev 456 (2011); Shelley Ross Saxer, *Faith in Action: Religious Accessory Uses and Land Use Regulation*, UTAH L. REV. 593 (2008); David L. Abney, *Religion and Housing for the Homeless: Using the First Amendment and the Religious Land Use Act to Convert Religious Faith into Safe, Affordable Housing*, 8 Scholar 1 (2005); Shelley Ross Saxer, *When Religion Becomes a Nuisance: Balancing Land Use and Religious Freedom When Activities of Religious Institutions Bring Outsiders into the Neighborhood Regulation*, 84 Ky. L.J. 507 (1996).

In general, it is fair to say that churches generally get a fair amount of latitude from courts to engage in a wide variety of accessory uses and to build a wide variety of accessory structures. For example, in *Lawrence School Corp. v. Lewis*, 174 A.D.2d 42, 578 N.Y.S.2d 627, 72 Ed. Law Rep. 313 (2d Dep't 1992), a New York court noted: "[E]ducational and religious institutions are generally entitled to locate on their property facilities for such social, recreational, athletic and other accessory uses as are reasonably associated with their educational or religious purposes." In *Havurah v. Zoning Board of Appeals of Norfolk*, 175 Conn 755, 386 A.2d 261 (1978), a Jewish synagogue argued that the ability to provide "unrestricted overnight

accommodations” was an accessory use. The court found that although such use might not be “customary” for a traditional synagogue, these residential accommodations were essential to the religious exercise of this particular religious community. The court explained that “[t]he legitimacy of nontraditional religious practices cannot depend upon what is customary among more traditional religious groups,” and these special sleeping accommodations were essential to the religious fellowship required by this nontraditional synagogue.

A review of cases from around the Country reveals that although exceptions exist, courts have permitted a wide variety of accessory uses, including:

- (1) mortuaries used in connection with a church;³
- (2) parochial schools;⁴
- (3) parking lots⁵
- (4) convents, rectories, and monasteries;⁶
- (5) playground, gymnasiums and swimming pools;⁷

³ *City of Tucson v. Arizona Mortuary*, 34 Ariz. 495, 272 P. 923 (1928).

⁴ *City of Concord v. New Testament Baptist Church*, 118 N.H. 56, 60, 382 A.2d 377, 380 (1978) (“a school may be considered as an integral and inseparable part of a church.”); *Alpine Christian Fellowship v. County Com’rs of Pitkin County*, 870 F. Supp. 991, 994 (D. Colo. 1994) (“religious education is an integral part of the religious beliefs of the church’s membership.”); *Board of Zoning Appeals of Town of Meridian Hills v. Schulte*, 241 Ind. 339, 172 N.E.2d 39 (1961). *Contra Abram v. City of Fayetteville*, 661 S.W.2d 371, 373 (Ark. 1983) (concluding that “a conditional use permit for a church does not automatically authorize the operation of a full-time parochial school”); *Seward Chapel, Inc. v. City of Seward*, 655 P.2d 1293 (Alaska 1982); *Hull v. Miami Shores Village*, 435 So. 2d 868, 869-70 (Fla. Dist. Ct. App. 1983) (holding that an administrative center located on church property is not a related or accessory use since less than one percent of services provided by center would be for benefit of the local church). In *Damascus Community Church v. Clackamas County*, 45 Or. App. 1065, 610 P.2d 273, rev. den. 289 Or 588 (1980), appeal dismissed, 450 US 902 (1981), the court ruled that the grant of a conditional use permit for a church does not automatically carry with it authority to operate a parochial school in cases where the County has separate criteria for churches and parochial schools. The court distinguished *City of Concord v. New Testament Baptist Church*, 118 N.H. 56, 382 A.2d 377 (1978). Unlike the Concord ordinance, the Clackamas County ordinance did not refer to “facilities usually connected with a church” but declared that full-time parochial schools are not among them, citing the county ordinance, which prescribed different minimum conditions for church use and school use, as support for this determination. See also *Christian Life Center v. Washington County*, 36 Or LUBA 200 (1996) (County successfully argued to LUBA that even if a proposed school use is an extension of a church, if the proposed use meets the definition of “school” it must seek separate land use approval for the school portion of the use). *Medford Assembly of God v. City of Medford*, 12 Or LUBA 167 (1984).

⁵ *Diocese of Rochester v. Planning Bd. of Brighton*, 1 N.Y.2d 508, 154 N.Y.S.2d 849, 136 N.E.2d 827 (1956); *Mahrt v. First Church of Christ Science*, 142 N.E.2d 678 Ohio 1955). But see *East Side Baptist Church of Denver, Inc. Klein*, 175 Colo. 168, 487 P.2d 549 (1971).

⁶ *City of Minneapolis v. Church Universal & Triumphant*, 339 N.W.2d 880, 888-89 (Minn. 1983) (holding that residential use of church property is an accessory use because monastery “furthers the purposes of the church in extending its teachings and ministry to the community”).

⁷ *Cash v. Brookshire United Methodist Church*, 61 Ohio App.3d 576, 573 N.E.2d 692 (1988); *Siebert v. Luney*, 491 N.Y.S.2d 15 111 A.D.2d 854 (1985); *Garbaty v. Norwalk Jewish Center, Inc.*, 148 Conn. 376, 171 A.2d 197 (1961)

- (6) meeting rooms, auditoriums, and other places of quasi-public assembly;⁸
- (7) day care centers;⁹
- (8) drug rehabilitation centers;¹⁰
- (9) softball fields;¹¹
- (10) counseling facilities;¹²
- (11) book and audiovisual centers;
- (12) homeless food¹³ and housing programs;¹⁴ and
- (13) domestic violence and crime victim residency programs.
- (14) signs.¹⁵

(swimming pool permitted).

⁸ *Elkhart Cty. Bd. of Zoning Appeals v. New Testament Bible Church, Inc.*, 411 N.E.2d 681 (Ind.App.1980); *Garbaty v. Norwalk Jewish Center, Inc.*, 148 Conn. 376, 171 A.2d 197 (1961) (Jewish Community Center uses permitted in residential zone); *Community Synagogue v. Bates*, 1 N.Y.2d 445, 154 N.Y.S.2d 15, 136 N.E.2d 488 (1956) (it was error for the lower court to uphold the refusal of a permit for a church to use its property for men's and women's social groups and for youth group activities); *Williams Island Synagogue, Inc. City of Aventura*, 358 F. Supp 1207, 1210 (S.D. Fla. 2005).

⁹ *Cohen v. City of Des Plaines*, 8 F.3d 484 (7th Cir. 1993) (Allowing churches to operate day care centers in existing buildings was less disruptive of residential areas.); *City of Richmond Heights v. Richland Heights Presbyterian Church*, 764 SW2d 647 (Mo. 1989). The holding in *Grace United Methodist Church v. City of Cheyenne*, 235 F.Supp.2d 1186 (D. Wyo. 2002) appears to support the position that a church may establish a claim under the RLUIPA to require a city to permit operation of a religious day care facility in a low-density residential neighborhood where such a facility would otherwise have been banned.

¹⁰ *Slevin v. Long Island Jewish Medical Center*, 66 Misc. 2d 312, 319 N.Y. S.2d 937 (Sup. Ct 1971).

¹¹ *Corporation of Presiding Bishop, Inc v. Ashton*, 92 Idaho 571, 448 P.2d 185 (1962) (lighted recreational fields).

¹² *Church of the Savior v. Zoning Hearing Bd of Tredyffrin Tp.*, 130 Pa Commw 542, 568 A.2d 1336 (1989).

¹³ *Jirtle v. Board of Adjustment of Town of Biscoe*, 175 N.C. App. 178, 622 S.E.2d 713 (2005) (operating food pantry is incidental and subordinate to church's main purpose of worship; floor area of proposed pantry less than floor area of sanctuary);

¹⁴ *St. John's Evangelical Lutheran Church v. Hoboken* 195 N.J.Super. 414, 479 A.2d 935 (1983) (shelter for homeless); *Greentree at Murray Hill Condominium v. Good Shepherd Episcopal Church*, 550 N.Y.S.2d 981 (Sup. 1989); *Fifth Avenue Presbyterian Church v. City of New York*, 293 F.3d 570 (2nd Cir. 2002) (injunction); *Fifth Avenue Presbyterian Church v. City of New York*, 177 F. App'x 198 (2d Cir. 2006); *Sullivan v. Board of Zoning Appeals of City of Albany*, 144 A.D.3d 1480, 42 N.Y.S.3d 428 (3d Dep't 2016), *leave to appeal denied* 2017 WL 1094771 (N.Y. 2017). But see *First Assembly of God v. Collier County*, 20 F.3d 419, 424, *modified*, 27 F.3d 526 (11th Cir.1994), *cert. denied*, 115 S.Ct. 730 (1995) (In a Pre-RLUIPA case, the Eleventh Circuit upheld City action to shut down a Church's homeless shelter located in a residential neighborhood.); *Daytona Rescue Mission, Inc. v. City of Daytona Beach*, 885 F. Supp. 1554 (M.D. Fla. 1995) (rejecting claim of substantial burden on religion, but recognizing that other courts have held that regulating religious conduct through zoning laws is a substantial burden on religion).

¹⁵ *Parkview Baptist Church v. City of Pueblo*, 139 Colo. 98, 336 P.2d 310 (1959) (27 square foot neon sign outdoors proper incidental use to church in residential zone).

In this case, the gravamen of the dispute focuses on whether homeless persons should be allowed to seek shelter in a church during periods of inclement winter weather. Opponents of the proposed use do not want homeless persons in the neighborhood, because they have witnessed various negative effects associated with the presence of homeless persons. The problem of keeping out people who are not members of the local residential community is especially acute when places of worship, located in residential neighborhoods, seek to assist disadvantaged nonresidents.

A prime example of this type of controversy occurred in *Western Presbyterian Church v. Board of Zoning Adjustment*, 862 F. Supp. 538 (D. D.C. 1994), *appeal dismissed* (D.C. Cir. 1995). In that case, residents of an "outstanding neighborhood" in Washington, D.C. complained to the zoning administrator about a church's program to feed the homeless. The residents contended that the feeding program would attract the homeless to the neighborhood, resulting in more crime and a decline in property values. Although the court was sensitive to the community's concerns, it held that the church should be allowed to conduct its "very worthwhile program" unless it became a nuisance. This holding was based on a finding that "the Church's feeding program in every respect is religious activity and a form of worship." Because the court considered the feeding program to be an accessory use, it concluded that "the Church may use its building for prayer and other religious services as a matter of right and should be able, as a matter of right, to use the building to minister to the needy."

The case of *Greentree at Murray Hill Condominium v. Good Shepherd Episcopal Church*, 550 N.Y.S.2d 981 (Sup. 1989) provides another good example of how courts analyze these types of cases. In response to a citywide need for emergency shelters for thousands of homeless, an Episcopal church in New York City opened its doors to groups of 10 homeless men for temporary emergency shelter 3 nights each week. The city provides the churches and synagogues with beds, linens, clothing, toiletries, and cleaning supplies, and inspects shelters for compliance with health and safety regulations. Homeless men are transported to the church from a "drop-in center," and arrive at 9:30 PM. They are picked up by bus the following morning at 6:00 AM. From the time of their arrival until their departure the next morning, the men are continually supervised and are not allowed to congregate in the street. The church's minister asserted that sheltering the homeless is an important part of the church's religious mission. Neighboring luxury condominium owners sought a court order preventing the church from continuing its homeless shelter. They complained that the shelter violated city zoning laws, and constituted a public nuisance. The court began its opinion by observing that the lawsuit "concerns the extent, if any, to which the court may or should be brought in as arbiter of a dispute involving the right of a church and its parishioners to exercise their religion and to practice Christian charity by temporarily sheltering the homeless and the rights of some adjacent property [owners] who fear crime, drug sales, prostitution and a [decrease] in their property values." The court acknowledged that churches may only be used for religious and social purposes, but it noted that "it has long been held that a church or synagogue may be used for

accessory uses and activities which go beyond just prayer and worship." The court concluded that a church's operation of a shelter for the homeless is a legitimate "accessory use" of a church, since it "is a use which is clearly incidental to, and customarily found in connection with," a church. Therefore, a church's operation of a homeless shelter did not violate the city's zoning laws. The court further held that the shelter could not be shut down on the ground that it constituted a nuisance. It observed that a nuisance involves an intentional, unreasonable, and substantial interference with another's right to use and enjoy his property. The court concluded that the shelter was not a nuisance, since it was not an intentional, unreasonable, or substantial interference with neighboring landowners' use or enjoyment of their properties.

Adding complexity to the issue is the fact that Federal law weighs in on the topic. In 1963, the Supreme Court invalidated a state unemployment compensation rule that conditioned the availability of benefits on an applicant's willingness to work on a day forbidden by the applicant's religion. *Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963). The Supreme Court held that government actions that substantially burden a religious practice must be justified by a compelling governmental interest. *Sherbert*, 374 U.S. at 403.

In 1990, the Supreme Court decided *Employment Div., Dept. of Human Resources of Oregon v. Smith*, a case in which the plaintiff's use of peyote resulted in their dismissal from employment. *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990). The Supreme Court held that the Free Exercise Clause of the U.S. Constitution does not "relieve an individual from the duty to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." Further, the Supreme Court held that the correct balancing test to be used where the question is a law of general applicability is not the strict scrutiny test, but the rationality test.

In response to the *Smith* decision, Congress passed the Religious Freedom Restoration Act (RFRA) in 1993. RFRA essentially sought to codify the *Sherbert* holding and to apply that test to any law at any governmental level that would "substantially burden" religious exercise even if that law was one of general applicability. RFRA cited the *Smith* case in its purpose and intent clauses and further noted that RFRA was enacted so that the strict scrutiny test would be the test in a case involving religious freedom. RFRA's reach applied to any state or local activity that substantially burdened religion and required that any such substantial burden be justified by a compelling governmental interest implemented by the least restrictive means available.¹⁶ In its

¹⁶ As an example, in a RFRA-era case entitled *Jesus Center v. Farmington Hills Zoning Board of Appeals*, 544 N.W.2d 698, 705 (Mich. Ct. App. 1996), the court determined that a zoning board's refusal to allow a homeless shelter as an accessory use to a church violated RFRA. Questioning whether certain activities furthered a religious institution's beliefs was determined to be beyond the court's authority. *Id.* at 703. Nevertheless, the Jesus Center court found that such a religious purpose was easy to believe since "[t]he specific act of charity at issue here, providing shelter or sanctuary to the needy, has been part of the Christian religious tradition since the days of the Roman Empire." *Id.* at 704. The court recognized "that zoning regulations are a legitimate means to protect important property interests and accommodate competing uses of property within a community," and assumed for purposes of analyzing the alleged RFRA violation "that the Zoning Board's action was in furtherance of a

1997 decision entitled *City of Boerne v. Flores*, 521 U.S. 507, 117 S. Ct. 2157, 138 L. Ed. 2d 624 (1997), the Supreme Court declared RFRA unconstitutional as applied to states and local governments, but found it to be valid as to Federal government action.

Undeterred, Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"). The goal of RLUIPA was to overturn *City of Borne* and to prohibit local governments from imposing land use regulations in a manner that substantially burdens religious exercise where the government cannot demonstrate that the imposition of that burden furthers a compelling government interest and is the least restrictive means of furthering that interest.

RLUIPA has been upheld by the vast majority of federal courts that have reviewed it.

Lighthouse Cmty. Church of God v. City of Southfield, No. 05-40220, 2007 WL 30280, at *10 (E.D. Mich. 2007); see *Guru Nanak Sikh Soc'y v. Cnty. of Sutter*, 456 F.3d 978, 995 (9th Cir. 2006); *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 898 (7th Cir. 2005); *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F. 3d 1214, 1239-40 (11th Cir. 2004); *United States v. Maui County*, 298 F. Supp. 2d 1010, 1016 (D. Haw. 2003); *Freedom Baptist Church v. Twp. of Middletown*, 204 F. Supp. 2d 857, 874 (E.D. Pa. 2002).

RLUIPA prohibits a government from implementing a land use regulation that imposes a "substantial burden" on religious exercise, including a religious assembly or institution, unless the government demonstrates that it furthers a "compelling government interest" by the "least restrictive means." The statute calls for the use of a "strict scrutiny" standard.

RLUIPA contains three other rules related to discrimination and exclusion:

- (1) Equal terms. No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.
- (2) Nondiscrimination. No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.
- (3) Exclusions and limits. No government shall impose or implement a land use regulation that—
 - (A) totally excludes religious assemblies from a jurisdiction; or
 - (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

'compelling governmental interest.'" Nonetheless, the court then determined that the Zoning Board did not use the "least restrictive means" under RFRA to achieve this purpose because the Zoning Board completely prohibited the homeless shelter at issue rather than working with the Jesus Center to address neighborhood concerns about the operation of the shelter.

The “substantial burden” provision concerning local land use regulation is at issue here. The statute states as follows:

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution:

(A) is in furtherance of a compelling governmental interest;

and

(B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000cc. Thus, to succeed on a RLUIPA claim, “the plaintiff must demonstrate that a government action has imposed a substantial burden on the plaintiff’s religious exercise.” *Int’l Church of the Foursquare Gospel v. City of San Leandro*, 673 F.3d 1059, 1066 (9th Cir. 2011); see 42 U.S.C. § 2000cc(a)(1). Once the plaintiff has shown a substantial burden, the government must show that its action was “the least restrictive means of furthering [a] compelling governmental interest.” 42 U.S.C. § 2000cc(a)(1)(B).

The “substantial burden” rule applies if the burden is imposed in the *implementation of a land use regulation* or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, *individualized assessments* of the proposed uses for the property involved. Simply put, RLUIPA applies when the government may take into account the particular details of an applicant’s proposed use of land when deciding to permit or deny that use.

Courts in cases decided under RLUIPA have expressed a willingness to allow certain activities as long as they are accessory to a permitted use. Nonetheless, the federal circuits are divided as to how the phrase “substantial burden” should be defined and applied. The Fourth, Fifth, Seventh, Eighth, Ninth, and Eleventh Circuits define substantial burden differently, but each definition has a similar effect. Oregonians are subject to cases decided by the Ninth Circuit. The Ninth Circuit describes it as one that “must impose a significantly great restriction or onus upon such exercise.” *Guru Nanak Sikh Soc. v. County of Sutter*, 456 F.3d 978, 988, 992 (9th Cir. 2006) (quoting *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004)) (distinguishing its earlier decision in *San Jose Christian College* on the facts and holding that “[b]ecause the County’s actions have to a significantly great extent lessened the prospect of Guru Nanak being able to construct a temple in the future, the County has imposed a substantial burden on Guru Nanak’s religious exercise”).

In *Guru Nanak*, the 9th Circuit found that a substantial burden came from the combination of two factors: (1) rejecting two separate CUP applications based on inconsistent reasoning, which created uncertainty for any future applications; and (2) the City cited noise and

traffic as reasons for denial, even though the group agreed to every proposed mitigation measure. Ultimately, there were only a few parcels in the city theoretically available to the group, which greatly lessened the prospect that the group could build a temple in the future, and that was a substantial burden. While there is no bright line rule, decisions that result in significant delay, uncertainty or expense for religious uses seem to be indicative of a substantial burden on religious exercise.

In 2016, the Ninth Circuit issued an unpublished opinion concerning cities' denial of a Church's conditional use permit application to operate a homeless shelter. *Harbor Missionary Church Corp. v. City of San Buenaventura*, No. 14-56137 (9th Cir. 2016) (Unpublished opinion). The Church began to provide religious teachings, worship music, prayer, clothing, food, showers, counseling, and other support at its church for homeless men and women living in the City of Ventura, as part of its religious duty to serve "the least of these" (Matthew 25:34-46) among us. In 2013, after nearby residents expressed concerns about this activity, the City told the Church that it needed to obtain a conditional use permit to continue its homeless ministry. The Church applied for the permit, which the City promptly denied. The Church then filed suit, claiming that the City's denial infringed on its religious practices and, pending the lawsuit, sought a preliminary injunction to keep open its homeless ministry. The district court denied the Church's request, ruling that a preliminary injunction was not appropriate because the Church faced no substantial burden in having to move its "homeless services" to another location, and, even if it did, the complete denial of the permit was the least restrictive way to mitigate the City's safety concerns.

On appeal, the Ninth Circuit reversed. It held that the district court erred in determining that the Church's religious exercise was not substantially burdened by denial of a conditional use permit, and that the district court had erred "by questioning the validity of the Church's religious beliefs and by determining that its homeless ministry could be divided piecemeal when the Church insisted on the importance of keeping its homeless ministry as a whole at the same location." The Ninth Circuit further found that "[t]he substantial cost associated with relocating the site of the Church demonstrates that the denial of the conditional use permit substantially burdens the Church's religious exercise." While the City demonstrated it "had a compelling interest in promoting public safety and in preventing crime," the district court "failed to apply the proper analysis when it determined that the City had used the least restrictive means to achieve this goal." Noting that the City's staff had recommended that the use permit be approved, subject to certain conditions to mitigate some of the outreach program's impacts on the local community, the Ninth Circuit found that the district court abused its discretion when it "failed to give appropriate consideration to the viability of such a conditional use permit" and instead "in a single sentence . . . concluded summarily that the Church's operation was 'so incompatible' with the neighborhood and so detrimental to public safety that outright denial was the City's only option."

The Ninth Circuit therefore remanded the case for further findings about what conditions the Church would comply with if the City granted a conditional use permit and to "detail why the

conditional use permit recommended by the City's staff would or would not sufficiently protect the neighborhood from any negative effects shown to be the result of the Church's ministry to the homeless."

Although these cases tend to be very fact specific and difficult to predict, a majority of courts have been sympathetic toward RLUIPA in cases involving temporary shelter and other forms of housing for the homeless. For example, in 2002, the U.S. Court of Appeals for the Second Circuit upheld an injunction prohibiting the City of New York from dispersing homeless persons that a church had allowed to sleep on the church's outdoor property, in part based on RLUIPA. *Fifth Avenue Presbyterian Church v. City of New York*, 293 F.3d 570 (2nd Cir. 2002). The Second Circuit accepted the church' position that this assistance for the homeless was "an integral part of its religious mission," and that the church was "commanded by scripture to care for the least, the lost, and the lonely of this world, and, in ministering to the homeless, the Church [was] giving the love of God. There is perhaps no higher act of worship for a Christian."

Other sample cases upholding various accessory uses under RLUIPA include:

- In *Dilaura v. Ann Arbor Charter Township*, 30 Fed Appx. 501 (6th Cir. 2002), the United States Court of Appeals for the Sixth Circuit held that a religious organization was entitled to allege that the RLUIPA permitted it to use its property as a religious retreat, despite a contrary zoning ordinance.
- In *Shepherd Montessori Center Milan v. Ann Arbor Charter Township*, 675 N.W.2d 271 (Mich. Ct App 2003), the Michigan Court of Appeals held that the RLUIPA might provide a basis for relief for people who wanted to open and operate a religious primary school for children, despite a local ordinance that the only proper use for the land was as an office park.
- In *Konikov v. Orange County, Florida*, 410 F.3d 1317 (11th Cir. 2005), the Eleventh Circuit Court of Appeals held that the county was not entitled to summary judgment against a rabbi who was conducting religious meetings and services at his home, in defiance of county ordinances, because the lack of rational, even-handed enforcement standards had created a risk of arbitrary and discriminatory enforcement.

While some cases indicate otherwise, the majority trend favors enforcing the RLUIPA's plain terms, thereby affording greater protection to religious organizations seeking to use land for religious purposes in areas restricted by adverse regulations and laws.

In this case, no party raises RLUIPA and therefore the hearings officer does not base his recommendation on this federal law. Instead, the hearings officer turns to the operative provisions of the City of North Bend's Zoning Code. Nonetheless, the City Council should be aware of RLUIPA and its potential applicability when making any decision on this CUP. The hearings officer believes that any outright denial of a CUP could have been vulnerable to appeal

had the applicant raised the issue. But regardless of any appeal, the City Council should be interested in the correct application of federal law.

We turn now to a discussion of the code, and more specifically. According to NBCC 18.04.030(1), an "accessory use" is a use of land found on the same lot as the "main" use and that is both "incidental and subordinate" to the primary use. An accessory use is, by its very definition, a separate land use from the primary use.

The most limiting criterion is that an accessory use must be both "incidental" and "subordinate" to the primary use. These terms are not defined in the code. Under general rules of statutory construction, a dictionary can be used to assist in determining the plain and ordinary meaning of the phrase "incidental and subordinate." Webster's Third Internat'l Dictionary 1981, 1142 defines "incidental" as:

1 : subordinate, nonessential, *or* attendant in significance."

Webster's Third Internat'l Dictionary 1981 at 2277 defines "subordinate" as:

"1: to place in a lower order or class: make or consider as of less value or importance."

The terms incorporate two separate concepts. First, the scale of the accessory use should not overshadow the primary use: it must be "subordinate and minor in significance." Second, by being in a lower order or class, the accessory use must also have a reasonable relationship with the primary use.

LUBA's decision in *McCormick v. City of Baker*, 46 Or LUBA 50 (2007) is instructive as to the "scale" concept. In *McCormick*, LUBA reversed a city council decision that interpreted the city's zoning ordinance to allow four grass tennis courts, support structures and ancillary parking as an accessory to a residential use in a city residential zone. Similar to the North Bend Zoning Code, the zoning ordinance in *McCormick* also required that an accessory use be "incidental" and "subordinate" to the residential use. 46 Or LUBA at 56.

The house at issue in *McCormick* was 1,988 s.f. and featured an attached garage. The approved accessory use included two sets of dual tennis courts (a total of four courts) with bleachers and a "cabana-like clubhouse" between them surrounded by a ten-foot high wall/screen. The clubhouse had showers and a restroom. Parts of the property had been leveled for car and recreational vehicle parking and tent camping. The property hosted five tennis tournaments between June and early September with 18 to 48 entrants and 22 to 27 tournament days. The tennis courts included lighting to allow nighttime tennis matches. The property owners did not charge a fee to use the courts. 46 Or LUBA at 51-53.

LUBA concluded in *McCormick* that the city council exceeded its discretion under ORS 197.829(1):

"There is no dispute that the tennis facility far exceeds the physical scope, scale and intensity of both the dwelling and the recreational needs of the dwelling's residents. There also seems no dispute that most of the structural and operational aspects of the tennis facility (the extra courts, bleachers, clubhouse, parking, RV camping, public tournaments and unrestricted public access) go far beyond the recreational needs of the residents and were designed and built to accommodate large, intensive public tennis events. The city's decision does not explain why, under its basic approach of comparing the nature and scale of the tennis facility and dwelling, it is permissible to rely on two factors to the exclusion of other, highly relevant considerations.

"The question under ORS 197.829(1) is whether the city's interpretation of its code is consistent with the express language of the code, read in context. *Church v. Grant County*, 187 Or App 518, 69 P3d 759 (2003). The BCZO does not define 'incidental' or 'subordinate,' and the challenged decision does not provide an express interpretation of those terms. Land use codes often define 'accessory' uses with similar terms. There is no reason to believe that the city code gives those terms something other than their ordinary meaning. Yet, by focusing exclusively on the seasonal and noncommercial nature of the tennis facility, the challenged decision allows a use that in almost all other parameters dwarfs residential use of the property. We do not think the terms 'accessory,' 'incidental and subordinate' are quite that elastic.

'Consideration of context supports our view that the city's interpretation exceeds the discretion allowed the city under ORS 197.829(1). As noted, the R-MD zone allows as a conditional use a 'service club, lodge or other quasi-public use.' If there is a meaningful difference between the disputed tennis facility and a 'quasi-public use,' we do not know what it could be. The fact that the proposed facility appears to fall squarely within a category of non-residential uses conditionally allowed in the R-MD zone is a strong contextual indication that the disputed facility cannot be reasonably viewed as an 'accessory' use to a residential use."

46 Or LUBA at 58-59 (footnotes omitted).

Church uses and their accessory uses are permitted when authorized through the Conditional Use Permit (CUP) review process. In this case, the “scale” of the proposed warming center is clearly subordinate to the primary use of the property as a church. The use will be undertaken in an existing structure, and the number of days in which the operation is active is minor in comparison to the use of the structure for other church purposes. The proposed use is a secondary use of the existing building and incidental to the main Church use, operating only during inclement weather events through the night hours, with the purpose of providing emergency relief to those without shelter. An inclement weather event, as defined by the applicant, is when temperatures reach thirty-six degrees (36°) Fahrenheit or lower, or when wind speeds reach forty (40) miles per hour (mph) or greater.

Turning to the “reasonable relationship” concept, the hearings officer finds that a church cannot enjoy completely unfettered use of its property just because the activities conducted on the property are desired by the church. Rather, to fit within the definition of a church use, the accessory activities to which the property is put must be reasonably closely related, in substance and in space, to the church's core mission and purpose. The activity or use must be intended to promote the purposes for which the church is instituted, the most, but not sole, prominent purpose of which is the public worship of God. *See, e.g., Bruce v. Cent. Methodist Episcopal Church*, 147 Mich. 230, 110 N.W. 951 (1907).

In this case, the proposed warming center easily meets the “reasonable relationship” test. The applicant testified that although it is not their goal to be the “homeless church,” that providing services to the homeless is “part of what we are supposed to be doing” and is “part of our Mandate.” The hearings officer interprets this to mean that the warming center is part of the Church’s mission and purpose.

This criterion is met.

NBCC 18.60.010 AUTHORIZATION TO GRANT OR DENY CONDITIONAL USES.

Uses designated in this title as conditional uses may be permitted, enlarged, or otherwise altered upon authorization by the planning commission in accordance with the standards and procedures set forth in this chapter. Conditional uses are those which may be found appropriate, desirable, convenient, or necessary in the applicable district subject to the following standards:

Hearings Officer’s Findings. The phrase “may be found appropriate, desirable, convenient, or necessary” does not create an independent approval standard for a Conditional Use Permit. *Coffey v. City of North Bend*, 17 Or LUBA 527 (1989). The hearings officer notes that the City Council again adopted this interpretation in CUP 1-16 / APP 3-16. The parties in the present case have provided the hearings officer no reason to deviate from the prior holding of the City Council.

The hearings officer finds that the second sentence of NBCC 18.60.010 is not an independent approval standard.

(1) *The use is found to be compatible with adjacent uses or may be made compatible through the imposition of conditions; and*

Hearings Officer's Findings. NBCC 18.60 requires the decision-maker to adopt findings demonstrating that "the use is found to be compatible with adjacent uses or may be made compatible through the imposition of conditions of approval." In this introductory section, the hearings officer explores the correct meaning of the phrase "compatible with adjacent uses."

The term "compatible" is not defined in the Code. Turning to Webster's Third New International Dictionary, the term "compatible" is defined as follows:

"Capable of existing together in harmony." Capable of existing together without discord or disharmony.

Webster's Third New International Dictionary, 1993. See generally *Vincent v. Benton County*, 5 Or LUBA 266 (1982), *aff'd*, 60 Or App 324, 653 P2d 279 (1982) (noting this definition). The same dictionary offers the following definitions of the terms used in the definition above.

Harmony: "Correspondence, accord" <lives in *harmony* with her neighbors>

Correspondence: "the agreement of things with one another, a particular similarity."

Accord: "to bring into agreement : reconcile."

LUBA has stated that even though compatibility is defined as there being an "agreement," it does not require that the surrounding landowners necessarily agree that the proposed use is compatible. *Clark v. Coos County*, 53 Or LUBA 325 (2007). Rather, it is up to the decision-maker to make a determination, based on the evidence in the record, whether the proposed use is compatible with its surroundings. In other words, neighbors do not necessarily have "veto" power over an application. Nonetheless, neighbor testimony is important when evaluating whether two land uses are going to be able to live in harmony with one another.

LUBA has considered a number of cases where the "compatibility" standard has been an issue, and a set of rules for analysis has emerged from the case law:

- Compatibility is measured by assessing both the characteristics and scale of the use and the surrounding uses. *Hannan v. Yamhill County*, 6 Or LUBA 83, 92 (1982). "For example, how intensive is the use, how much traffic it will generate and are these characteristics 'compatible' with existing structures and uses." *Ruef v. City of Stayton*, 7 Or LUBA 219 (1983).

- The compatibility analysis is not a balancing test of need versus impact. *Vincent v. Benton County*, 5 Or LUBA 266 (1982).
- Compatibility does not necessarily mean that *all* negative impacts of the proposed use be eliminated. *Clark v. Coos County*, 53 Or LUBA 325 (2007). However, it does, by its very definition, preclude such negative impacts that prevent the proposed and existing uses from existing in harmony or agreement with each other.
- When the ordinance uses the more common term “surrounding uses,” the focus the analysis on the “status of those living nearby:”

“Here, the ordinance does not call for evaluation of the impacts on surrounding land uses. Compatibility with scenic views is the issue. The difference is significant. When surrounding land uses are protected under particular ordinance provisions, the status of those living nearby is given special significance.” *Marineau v. City of Bandon*, 15 Or. LUBA 375 (1987). (Emphasis added).

- The compatibility standard extremely subjective, and the fact that there is conflicting evidence will not necessarily create an issue requiring remand, since LUBA is not allowed to substitute its judgment for the decision-maker. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601, 617 (1993). See also *Knudsen v. Washington County*, 39 Or. LUBA 492 (2001).
- The decision-maker “is entitled to appropriate deference in selecting the factors it chooses to consider and how it weights those factors.” *Clark v. Coos County*, 53 Or LUBA 325 (2007). Thus, the result of the analysis may hinge on which relevant factors the local decision maker felt deserved emphasis. *Knight v. City of Eugene*, 41 Or LUBA 279 (2002).
- What is critical is that the decision-makers findings, as a whole, respond to the compatibility issues raised below. *Id.*

Compatibility findings require a number of analytical steps, which we discuss below.

Step 1: Define the proposed use.

The first step in analyzing this criterion is to determine the nature and scope of the proposed use. See generally *Columbia Riverkeeper v. Columbia County*, __ Or LUBA __ (LUBA No. 2014-017, 2014-018 (August 27, 2014), Slip op at 58 (“We generally agree with petitioners that because the compatibility standard focuses on “adverse impacts,” it cannot be

meaningfully addressed unless the "proposed use" is described sufficiently to identify and evaluate its likely adverse impacts.").

The warming center use will operate in partnership with Oregon Coast Community Action (ORCCA) and other resourcing organizations. The warming center is intended to service homeless families with children, senior citizens, and individuals with major handicaps (such as persons in a wheelchair). Three (3) to four (4) trained adult staff members will run the warming center use under a set of defined rules and only during inclement weather events, when temperatures reach or drop below thirty-six degrees (36°) Fahrenheit, or when winds reach forty (40) miles per hour or greater. This is estimated to be as few as eight nights a year, and as many as 30 nights a year.

The use will occupy existing building space. It will operate on applicable nights between the hours of 8:00 p.m. and 8:00 a.m. The use will provide food, utilizing an existing cooking facility, to those staying overnight; meals will not be available to the public. Users are expected to remain indoors. Smoking is accommodated in designated outdoor areas. There will be no laundry facilities and no shower facilities. The use will generate little vehicular traffic and low amounts of pedestrian traffic, less traffic than is regularly generated by the main Church use that operates during different hours.

Step 2: Define the phrase "adjacent uses."

When approval standards require an examination of impacts on a geographic area, the decision maker must delineate the area that is being examined. *DLCD v. Curry County*, 21 Or LUBA 130, 135 (1991); *Benjamin v. City of Ashland*, 20 Or LUBA 265, 271 (1990); *Multnomah County v. City of Fairview*, 18 Or LUBA 8 (1989).

The term "adjacent" is capable of more than one possible meaning and, therefore, requires interpretation. Unfortunately, neither the zoning code nor the building code define the term "adjacent." The Comprehensive Plan also does not define the term either. See generally *O'Mara v. Douglas County*, 25 Or LUBA 25, 37, *rev'd and rem'd on other grounds*, 121 Or App 113, 854 P2d 470, *rev'd* 318 Or 72, 862 P2d 499 (1993) (county must apply the "adjacent" language in zoning code consistently with the county's comprehensive plan, which defined the term.). One possibility is that the phrase is intended to identify properties that directly abut the subject property. On the other hand, the term "adjacent" could mean "nearby." LUBA has held that this latter interpretation is reasonable and correct interpretation in a similar context. *Stefan v. Yamhill County*, 18 OR LUBA 820, 844-45 (1990).

For this case, the hearing officer has generally considered all nearby uses to the church to be "adjacent." Testimony at the hearing revealed that the adjacent uses on the North side of Newmark Ave. are all residential in nature, although photos reveal that at least one or two empty lots exist. However, because Newmark Ave is an arterial street, the area sees a high amount of

pedestrian traffic by persons moving through the neighborhood. This pedestrian traffic may contribute to the crime problem noted by residents in the area.

The hearings officer determined that uses across the arterial are not affected by the proposal, and are therefore excluded from the analysis.

Step 3: Explain how the proposed use is “compatible” with adjacent uses.

Churches, synagogues, and like places of public worship ordinarily are generally allowed in residential zones as conditional uses. The City of North Bend follows the general trend in this regard. Places of public worship and their accessory uses should not be excluded from residential zones as a matter of policy, because such institutions tend to promote the public health, comfort, and general welfare. They are, therefore, desirable to the community. So far as zoning laws are concerned, the exclusion of such places of worship and their accessory uses is generally unrelated to maintaining the public health and welfare.

In this case, the hearings officer has considered a number of factors when deciding if the proposed warming center use is compatible with the adjacent uses, including:

- Nature and characteristics of the proposed uses;
- Potential for conflicts with adjacent uses;
- Impacts such as noise, litter, crime, etc.

The hearings officer also considered the Planning Commission’s decision. In reading the minutes, it is apparent that the Planning Commission did not think the proposed use was compatible with the adjacent residential uses. However, the Planning Commission never explained in its findings why this is to be the case. Nonetheless, the gist of the argument appears to be as follows: The church has in the past taken certain actions which have tended to draw in homeless people, including people that are living out of RVs and vehicles. These homeless people have caused a number of problems for the community, including (according to neighbors who testified in this case):

- Littering,
- Camping and sleeping on Church property and on adjacent ROW
- Possible drug dealing,
- Possible prostitution activity, and
- Urinating and defecating in the area around the church.

The concern expressed at the hearing is that the proposed use will further attract more homeless people, which, in turn, will increase the likelihood of additional unwanted activity. The opponents noted that the homeless community will hear about the warming center by

“word of mouth” (aka: the “grapevine), and will show up even if they know they are uninvited guests.

The problem with this analysis is that the conclusion that the proposed accessory use will exacerbate the existing problems is simply speculative and not supported by the facts in the record. If word of mouth is the basis for the conclusion that uninvited persons will show up in an effort to obtain services, then word of mouth should also dispel the notion that uninvited persons will be successful in their efforts. Obviously, if the applicant does accommodate uninvited guests, then a problem may occur. However, the applicant has stated that they will not do so, and the hearings officer is willing to take them at their word on a one-year trial basis.

The hearings officer finds that there already exists a situation whereby homeless persons cause problems in the adjacent residential neighborhood. Such problems have been reported by neighbors and include theft of personal property, camping in vehicles, leaving trash and human excrement on property owned by others, sleeping on private property, and potentially even prostitution and drug use. However, the hearings officer fails to see how the proposed warming center use, as conditioned, will make the situation any worse. Stated another way, there does not appear to be any clear correlation between the warming center and any potential increase in negative effects. In fact, the opposite may be true. The applicant has acknowledged that it took certain actions in the past that may have encouraged homeless persons to camp on or near the church property, but has since revised its operating procedures to lessen these negative side effects.

The hearings officer finds that the intermittent nature of the warming center is an aspect of the use that favors a compatibility determination. The center will operate between eight and thirty days out of the year. This is a low occurrence use. The applicant stated that the Church does not have the resources to manage the operation on a more frequent basis. Also, the number of cold days in Coos County is also limited due to the mild climate.

Another significant fact that weighs in favor of granting the proposal is the fact that there is no public notice of the warming center. The applicant explained that it will work through various organizations such as ORCCA and DSA to reach out to a select group of potential users, who will be notified when the center will be open. A contact list will be maintained so that staff may communicate directly with those in need via phone (as opposed to providing a public notification). This lends to greater compatibility with the surrounding residential neighborhood because the use will not purposely attract a large amount of pedestrian traffic that, otherwise, would not be in the area.

In the event that unlisted individuals begin to congregate on-site during inclement weather events, van transportation will be available to transport those individuals to the Devereux Center. The applicant will notify the North Bend Fire and Police Departments each night the center is open so that they are prepared in the event a situation arises.

Staff noted that the applicant and residents of the neighborhood are actively working towards establishing a neighborhood partnership to allow for more open communications and a neighborhood watch program to help fight crime in the area.

The applicant proposes the following conditions of approval: As condition of approval, the applicant shall:

- Restrict the warming center clientele to families with children (under 18), with possible openings for senior citizens (over 65), and handicapped.
- Maintain a list of homeless families/seniors who could be served at the warming center.
- Make no public notification of open nights (no signs or public-address messages) and no meals available to the public, except for those on the list who are staying at the warming center.
- For individuals on-site who are not offered warming center services, provide van transportation to the Devereux Center, or other similar facility that provides services for homeless.
- Operate the warming center only when NOAA predicts temperatures to be at 36° Fahrenheit or below, or when winds reach forty (40) miles per hour or greater.
- Notify both City of North Bend Fire Department and Police Department on any night the warming center is open so that they will be prepared in the event a situation or emergency arises.

The hearings officer proposed one additional conditional of approval:

- This Conditional Use Permit shall be issued on a temporary (one winter season) basis in order to evaluate the impacts that the warming center has on the community, and the CUP shall expire on March 15, 2019. On or before that date, the applicant shall apply to the Planning Department to renew the CUP.

The criterion set forth in NBCC 18.60.010(1) is met subject to the above-enumerated conditions of approval.

(2) *The location, size, and design are consistent with existing adjacent uses or other uses allowed outright in the same zone district; and*

Hearings Officer's Findings. This criterion requires a finding of "consistency," which is to say that the applicant is required to compare the proposed use for "consistency" with existing adjacent uses, or, in the alternative, compare the proposed use with other hypothetical uses which are listed in the same zone as being allowed by right. Because the word "consistent" is not

defined in the Code, it should be defined by reference to a dictionary, which is to say that it means “compatible or in agreement.”

Note that the standard is written using the word “or,” which is to say that compliance may be found if either of the two comparisons is favorable. In a similar context, LUBA has stated that where a local approval criterion requires a finding that a proposed use will have a minimal adverse impact on surrounding uses compared to the impact of development permitted outright, a city may not deny a permit by limiting its impact analysis to only one permitted use such as single-family homes, where other permitted uses in the zone may have impacts similar to those of the proposed use. *Oregon Child Devel. Coalition v. City of Madras*, 43 Or LUBA 184 (2002).

The subject property is zoned Residential Transition (R-T) along the south one-half of the property and zoned Residential (R-6) along the north one-half of the property. The purpose of the Residential (R-T/R-6) zone districts are to accommodate residential use and to provide a buffer between residential uses and adjacent commercial uses. Churches and their accessory uses can be accommodated in this zone.

The applicant does not propose to change the location of the existing Church. The location of the proposed center, a ministry of the existing Church, is consistent with existing adjacent residential uses because it will occupy the existing Church building and do so only during inclement weather events through the night hours, to provide emergency relief to families with children under 18, seniors, and handicapped individuals without shelter.

The applicant does not propose to change the size of the existing Church. The existing Church is a single-story building of approximately 10,000 square feet in floor area, larger than adjacent residential dwellings but similar in size to other Church use buildings located within residential zones.

The applicant does not propose to change the design of the existing Church or otherwise change the outward appearance thereof. The building exterior and façade is architecturally similar to adjacent residential uses because it consists of light brown wood siding, small-scaled doors and windows, a shingled roof, and chimney.

Because the use will occupy the existing Church building, similar in design to adjacent uses, on land classified for residential use where Churches and their ministries are commonly located; and, because the use will not be advertised to the public and will generate only minimal amounts of traffic, and only during inclement weather events, where users will be housed indoors through the night hours, as is common in residential neighborhoods, the use is consistent with existing adjacent uses.

This criterion is met.

(3) *The use will not have a significant traffic impact compared to existing adjacent uses or other uses allowed outright in the same zone district; and*

Hearings Officer's Findings. NBCC 18.60.010(3) calls for a comparison between the "traffic impact" between the proposed use and either "existing adjacent uses" *or* other uses allowed outright in the R-T and R-6 zones. The successful applicant meets the criterion by providing evidence and findings pertaining to the following:

- Identify all of the existing adjacent uses;
- Identify the other uses allowed by right in the R-T and R-6 zones;
- Define the phrase "significant traffic impact;"
- Explain the traffic impacts caused by the proposal;
- Explain the traffic impacts of adjacent uses;
- Explain the traffic impacts of other uses allowed by right in the zone;
- Demonstrate that the traffic impacts of the proposal is not "significant" when compared to either the traffic impacts of adjacent uses *or* other uses allowed in the zone.

Steps 1 and 2: Identify the Adjacent Uses and Other Uses allowed in the R-T and R-6 Zone.

The hearings defined the "existing adjacent uses" above. Other uses allowed outright in the R-T and R-6 districts include single family dwellings and parks.

Step 3: Define the phrase "significant traffic impact."

As an initial matter, the phrase "significant traffic impact" must be defined. The criterion does not define what is meant by the term "traffic impact," but presumably it is broad enough to include a discussion of trip generation, parking, pedestrian safety, and similar traffic-related problems.

Second, it is important to note that this criterion relates only to *significant* traffic impacts. The applicant is not required to demonstrate that there will be *no* traffic impacts. *See generally Rural Thurston, Inc. v. Lane County*, 55 Or LUBA 382, 390 (2007)(using similar analysis when interpreting ORS 215.296). In a similar context, the court of appeals held that the word "significant" in ORS 215.296 "connotes a question of degree that is more a matter of fact than of law." *See Von Lubken v. Hood River County*, 118 Or App 246, 250, 46 P2d 1178 (1993).

From a logical standpoint, the opposite of significant is "insignificant," which is defined as "not worth considering, unimportant." Often in land use parlance, the opposite of "significant" is described by the term "*de minimis*." The hearings officer has previously attempted to conduct research on the meaning of the *de minimis*, in past cases, but did not find anything that was particularly enlightening.

The phrase "*de minimis*" is defined as follows in Black's Law Dictionary, Sixth Edition:

"De minimis non curat lex. The law does not care for, or take notice of, very small or trifling matters. The law does not concern itself about trifles. Provision is made under certain criminal statutes for dismissing offenses which are "*de minimis*." See, e.g., Model Penal Code §2.12."

Meriam Webster's On-Line Dictionary defines "*de minimis*" as "lacking significance or importance: so minor as to merit disregard."

Unfortunately, all of these definitions of these various terms are subjective, value-laden concepts that provide little in the way of concrete guidance. However, that is often the nature of conditional use standards: they are highly subjective and discretionary.

For purposes of this discussion, a "significant" impact to traffic is one that changes existing traffic conditions in a matter that creates a safety or operational hazard, reduces a level of service, or has similar negative capacity impacts. Traffic impacts often increase with the amount of trips, which makes trip generation an important factor in determining the significance of any impact. But other factors may also create impacts, such as access, parking, pedestrian safety, and other similar traffic-related aspects.

Step 4: Determine the traffic impacts of the proposed use.

The site consists of approximately seventy (70) off-street parking spaces with improved access points along Oak Street. The site lacks appropriate directional signage to guide motorists, who enter and exit the property via one-way access points at Oak Street, near its intersection with Newmark Street/OR 540. Additional access points are located along Pine Street, one of which appears to be used by heavy truck service for garbage and recycle bin pick-up. There is improved sidewalk along Oak Street and along Newmark Street/OR 540; as well, there are improved pedestrian pathways adjacent to the perimeter of the Church building and connecting to Commercial Street. Existing adjacent uses include Newmark Street/OR 540, vacant land, and low-density residential uses.

The applicant does attempt to quality the trip generation of the warming center. Nonetheless, given the fact that the applicant seeks to only accommodate 24 individuals, the number of trips will be insignificant even assuming that all of the individuals drive separately to the facility. The hearings officer believes that this is an unlikely assumption in any event, and believes it is much more likely that many of the patrons will walk or carpool to the Church facility.

The applicant expects the use will generate little traffic. Because the use is limited to a total of twenty-four (24) users, plus up to four (4) staff members, the use can expect to see a maximum of twenty-eight (28) users on-site during operating hours. This traffic will likely be in

the form of users arriving on foot and, less so, by vehicle. Users arriving by vehicle will park on-site, utilizing the existing off-street parking facility, which is more than adequate to meet the need, and stay inside the warming center. No testimony was received that indicated any fear of over increased traffic or traffic safety concerns.

For these reasons, the hearings officer does not expect the warming center use to create a significant traffic impact as compared to traffic impacts of other uses allowed by right in the zone such as a park. This criterion is met.

- (4) *The use complies with other applicable development standards in the same zone district. Conditions may include increasing the required lot size or yard dimensions, limiting the height of buildings, controlling the location and number of vehicle access points, increasing the street width, increasing the number of off-street parking and loading spaces required, limiting the number, size, and location of signs, and requiring screening and landscaping to protect adjacent property. In the case of a use existing prior to the effective date of this title and which is classified in this title as a conditional use, any change in use or in lot area or in any alteration of the structure shall conform with the requirements dealing with conditional uses.***

Hearings Officer's Findings. The hearings officer does not believe that the intent of this criterion was to make the comprehensive plan an approval standard. Rather, NBCC 18.60.010(4) appears to be intended to ensure that the setbacks, building heights, and similar standards applicable in the base zones are applied to conditional uses, except as otherwise exempted therein. Other applicable standards in the Residential (R-T/R-6) zone districts are as follows:

The subject property is developed with an existing Church use building and parking facility; one twenty-eight (28) square foot double-faced sign is located along the Newmark Street/OR 540 frontage. The warming center utilizes the existing development. Through the 2005 CUP application review process, Planning Commission found that the use meets those lot size, yard, building height, and lot coverage requirements that are set forth for properties in the Residential (R-T/R-6) zone districts, including those additional yard requirements that are set forth in NBCC 18.60.060 for a conditional use.

The applicant does not propose to make any new structural alterations of the existing development. Lighting will be added over each of two doors at the rear of the building, where no lighting existed prior. The applicant does not propose any signs advertising the proposed use. No overnight parking signs will be located in the Church parking lot to deter individuals from using the parking lot as a place to camp overnight. Lighting will be added to the exterior building doors to increase security around the premises.

This criterion is met.

NBCC 18.68.020 MINIMUM OFF-STREET PARKING SPACE REQUIREMENTS.

(3) Institutional, Public and Quasi-Public Type of Development and Number of Parking Spaces.

<i>Church, chapel, mortuary or auditorium</i>	<i>1 per 4 seats or 8 feet bench length</i>
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Hearings Officer's Findings. Based upon the current layout plan and past layout plans on record, the church use includes approximately thirty (30) to thirty-eight (38) pews, each sixteen (16) feet in length; therefore, a minimum of sixty (60) to seventy-six (76) parking spaces are required for the Church use.

This criterion is met.

NBCC 18.68.020 MINIMUM OFF-STREET PARKING SPACE REQUIREMENTS.

(1) Residential Type of Development and Number of Parking Spaces.

<i>Residential hotel, rooming or boarding house or club</i>	<i>2 per 3 guest rooms</i>
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Hearings Officer's Findings. The warming center will occasionally occupy approximately 2,800 square feet of floor area. Minimum off-street parking requirements for a warming center use are not specified in NBCC; however, Planning Commission can determine the minimum requirements based upon the requirements of comparable use [(NBCC 18.68.040(5))]. In this case, the warming center will serve as a facility where users share sleeping and eating space. The use does not legally meet the criteria of a rooming or boarding house; however, it is the most comparable use when considering NBCC. Additionally, the use does not expect to generate vehicular traffic, so any off-street parking requirements presented herein should be conservative values. The applicant proposes twenty-three (23) sleeping mats, all located in a single room; assuming one (1) sleeping mat equates to one (1) guest room, the minimum required off-street parking for the use is twelve (12) parking spaces.

The Hearings officer follows' staff's approach by assuming seventy (70) off-street parking spaces are improved, based on a recent count that is an estimate because existing pavement markings are not well delineated, having worn away over the years. The warming center use will operate between 8:00 p.m. and 8:00 a.m. only during inclement weather events. The main Church use operates on Sundays between the hours of 10:00 a.m. and 12:00 p.m., and between 4:00 p.m. and 6:00 p.m. every 1st and 3rd Sunday of the month; as well, the Church use provides breakfast to the community every Saturday between the hours of 7:00 a.m. and 9:00 a.m. Because the warming center use is primarily of a nighttime nature and the

Church use is primarily of a daytime nature the two uses do not materially overlap and, so, it is reasonable to assume the minimum off-street parking requirements for both uses are met when the existing parking facility is shared as set forth in NBCC 18.68.030(4). As condition of approval, the property owner shall coordinate with the Engineering Department to establish a pavement marking maintenance plan for the existing parking facility such that the parking facility maintains compliance with Chapter 18.68 NBCC. The parking facility shall maintain the minimum number of off-street parking spaces required for the main Church use and twelve (12) of these off-street parking spaces shall be made available for the accessory warming center use.

The criterion set forth in NBCC 18.60.010(3) is met subject to the above-enumerated conditions of approval.

NBCC 18.60.060 STANDARDS GOVERNING CONDITIONAL USES.

- (2) Limitation on Access to Property and on Openings to Buildings. The city may limit or prohibit vehicle access from a conditional use to a residential street and it may limit or prohibit building openings within 50 feet of residential property in a residential zone if the openings will cause glare or excessive noise or will otherwise adversely affect adjacent residential property.*

Hearings Officer's Findings. Access currently exists on-site and is addressed herein, under findings relative to traffic. Furthermore, the proposed use is more than fifty (50) feet from adjacent residential properties and is not expected to adversely affect adjacent residential property; however, nuisance concerns are addressed herein, under findings relative to compatibility.

NBCC 18.60.060 STANDARDS GOVERNING CONDITIONAL USES.

- (3) Signs. See Chapter 18.70 NBCC, Signs.*

NBCC 18.70.070 STANDARDS – RESIDENTIAL ZONES.

- (1) General. This section shall apply to all residential zones listed in NBCC 18.70.020(4) (R-5, R-6, R-7, R-10 and R-M zones).*
- (2) Size. (d) Signs for commercial and civic uses (i.e., church, school, public facility or neighborhood market) shall be allowed through an administrative conditional use permit process. Sign not to exceed 15 square feet of area on one side. Sign shall not be within a public right-of-way. Signs may be indirectly illuminated. Sign must be set back at least 15 feet from the edge of the curb line or the edge of the improved street travel surface. Sign shall not exceed three and one-half feet above ground level if located within 20 feet of the applicable "edge."*

NBCC 18.70.090 STANDARDS – R-T ZONE.

- (1) *General. This section shall apply to the residential transitional zone (R-T).*
- (2) *Size. (a) Each building of a commercial or civic use shall be allowed either one double-faced sign no greater than 32 square feet per side or one single-faced sign no greater than 32 square feet. (b) Residential uses shall conform to the requirements of NBCC 18.70.070(2)(a), (b), and (c).*

NBCC 18.70.030 DEFINITIONS.

“Banner” means any sign intended to be hung either with or without frames, possessing characters, letters, illustrations, or ornamentations applied to paper, plastic or fabric of any kind.

NBCC 18.70.040 SIGNS ALLOWED WITHOUT PERMIT.

- (10) *Special event signs. Signs shall be removed within 14 days from the date the sign is displayed. These signs may contain or consist of banners, posters, pennants, ribbons, streamers, flags or other similar moving devices.*

Hearings Officer’s Findings. There is one existing, permitted twenty-eight (28) square foot double-faced sign on the property, advertising the main College Park Community Church use; it is located within the Residential (R-T) zone district, along the Newmark Street/OR 540 frontage. There are no other active sign permits on record for this property. The applicant does not propose any new advertising signs. *“Private traffic direction signs”, signs guiding vehicular and pedestrian traffic on private property that may contain the name or logo but no other advertising copy, are allowed without permit, regulated under NBCC 18.70.040(3).*

This criterion is met.

NBCC 18.04.040 COMPLIANCE WITH ORDINANCE AND ISSUANCE OF OCCUPANCY PERMITS.

- (1) *No structure or premises may be used or occupied, and no structure or part of a structure may be erected, moved, reconstructed, extended, enlarged, or otherwise altered, except as permitted by this title.*
- (2) *No premises shall be used or occupied in the commercial or industrial zones unless and until an occupancy permit has been issued by the building official for the particular uses and activities to be carried on at such premises. No change in any use or occupancy shall be made at any such premises unless and until an occupancy permit has been issued by the building official permitting such change.*

Hearings Officer’s Findings. Staff uses the occupancy permit as a means to ensure compliance. The subject property is located in a residential zone district. NBCC does not

require nor prohibit issuance of an occupancy permit for uses located in residential zones. To ensure compliance with those enumerated conditions of approval that are set forth in this CUP Final Order, Staff recommends Planning Commission require issuance of occupancy permit prior to opening the warming center for use. As a condition of approval, the applicant shall obtain a use occupancy permit for the accessory Church use, a warming center, prior to opening for use. The use occupancy permit is a means by which staff verifies compliance.

NBCC 10.12.090 ACCESS PERMIT REQUIRED.

Access to a public street requires an access permit in accordance with the following procedures:

- (3) An access permit is tied to the specific use that it is issued for and is not transferable to a new or different use. A new access permit is required for a change in use or expansion of an existing use. Issuance of an access permit shall be based on compliance with the provisions of this chapter as determined by the city engineer.*
- (4) Approval of proposed developments that require an access permit from the city of North Bend, city of Coos Bay or ODOT shall be contingent upon the appropriate agency issuing an access permit. The city shall impose a condition of approval that requires the developer to obtain an access permit prior to the issuance of building permits.*

Hearings Officer's Findings. The use expands upon an existing use; therefore, a review of access is warranted. It is the recommendation of the Engineering Department that the following certain access control measures be taken on-site: install private traffic direction signs at the four (4) access points on Oak Street, which signs will identify points of entrance-only and exit-only; install a NO LEFT TURN sign at the southernmost exit on Oak Street; improve, with either gravel or pavement, the driveway approach surface that is located in the northwest portion of the property to prevent sediment runoff into the municipal stormdrain system. As condition of approval, the applicant shall obtain a valid City of North Bend Access Permit, which addresses those access control measures recommended by the Engineering Department prior to issuance of a building and/or use occupancy permit.

OUTSIDE AGENCY REQUIREMENT(S) NOT OTHERWISE ADDRESSED

Hearings Officer's Findings. General public comments are addressed in the staff report. Coos County Planning Department provided there are no objections and recommended the use be subject to proper licensing and inspections through Coos County Environmental Health. The North Bend Fire Department set forth the following conditions of Fire Department approval:

- 1. Per Oregon State Fire Marshal (OSFM) regulations, temporary shelters, including the proposed "warming center," shall only be operated a maximum of 90 days in any 12 month period.

2. Post in the fellowship hall and comply with the following maximum occupancy signs (which will be provided by the North Bend Fire Department): Entire fellowship hall – Max. Occup. Load, 201 Assembly, 94 dining; west fellowship hall – Max. Occup. Load, 84 Assembly, 39 dining; east hall – 117 Assembly, 55 dining, (when used as a) Warming Center – Max. Sleeping Occup. Load, 23 persons (including children).
3. Remove and refrain from using AT ANYTIME (with or without operation of the warming center), the “Use Other Door” bar placed over the panic hardware device on the south leaf of the east exit doors next to the Fellowship Hall (as said device renders the panic hardware inoperable).
4. DO NOT install “scissor gate” (or any other type of locking gate) on hallway entrances adjacent to the Fellowship Hall (as proposed on the submitted “Warning Center Layout”). A temporary non-attached, non-locked screening partition may be utilized, but ONLY when the warming center is in active operation AND conditional upon the church installing and maintaining the following sign(s) adjacent to hallway entrances wherein the temporary screens are to be used: “Temporary partitions allowed here ONLY when warming center is operating, by order of the North Bend Fire Chief.” Sign(s) to be provided by the North Bend Fire Department.
5. Refrain from frying or any form of oil-based cooking on the stove tops at ANYTIME (with or without operation of the warming center). Place sign in the kitchen the above stoves which reads: “Stoves for warming purposes only – NOT for frying or oil-based cooking.” Sign to be provided by the North Bend Fire Department.
6. Install and maintain smoke and carbon monoxide detectors on the ceiling of both the east and west sections of the fellowship hall.
7. Utilizing the “Warming Center Layout “ map, show the location of the smoke and carbon monoxide detectors, highlight the exit doors, and draw the exit pathways out of the building with arrows and post this “Emergency Evacuation Plan” on the walls of both the east and west sections of the fellowship hall.
8. Each night the warming center is operated, maintain, in a readily available location (for fire department use), an up-to-date roster of occupants spending the night.
9. Notify the North Bend Fire Chief in advance each time the church plans on opening and operating the warming center. Unannounced inspections by the North Bend Fire Department may be conducted and should be expected.
10. Place “EXIT” signs above the two southern exit doors to the fellowship hall. Signs shall be illuminated and have backup power or may have photo luminescent letters.
11. Remove and refrain from placing trash cans and the pew within the exit pathway adjacent to the fellowship hall.

12. Lighting on-site shall comply with “dark sky” standards and be properly shielded to prevent light pollution off-site, as such is prohibited in the NBCC18.68.060(g)
“Artificial lighting which may be provided shall be deflected so as not to shine directly into adjoining dwellings or other types of living units and so as not to create a hazard to the public use of a street.”

As condition of approval, the applicant shall provide staff with evidence of having obtained all proper Coos County Environmental Health Department licensing and inspections prior to issuance of use occupancy permit and shall meet those requirements set forth herein by the North Bend Fire Department.

The hearings officer recommends the Conditional Use Permit (CUP 7-17) on a temporary basis, with the following conditions of approval:

CONDITIONS OF APPROVAL:

1. This Conditional Use Permit shall be issued on a temporary (one winter season) basis in order to evaluate the impacts that the warming center has on the community, and the CUP shall expire on March 15, 2019. On or before that date, the applicant shall apply to the Planning Department to renew the CUP.
2. Obtain a use occupancy permit for the accessory Church use, the “College Park Temporary Warming Center”, prior to opening for use. The use occupancy permit is a means by which staff verifies compliance.
3. Obtain a valid City of North Bend Access Permit, which addresses those access control measures recommended by the Engineering Department prior to issuance of a building and/or use occupancy permit.
4. Coordinate with the Engineering Department to establish a pavement marking maintenance plan for the existing parking facility such that the parking facility maintains compliance with Chapter 18.68 NBCC. The parking facility shall maintain the minimum number of off-street parking spaces required for the main Church use and twelve (12) of these off-street parking spaces shall be made available for the accessory warming center use.
5. Per Oregon State Fire Marshal (OSFM) regulations, temporary shelters, including the proposed “warming center,” shall only be operated a maximum of 90 days in any 12 month period.
6. Post in the fellowship hall and comply with the following maximum occupancy signs (which will be provided by the North Bend Fire Department): Entire fellowship hall – Max. Occup. Load, 201 Assembly, 94 dining; west fellowship hall – Max. Occup. Load, 84 Assembly, 39 dining; east hall – 117 Assembly, 55 dining, (when used as a Warming Center – Max. Sleeping Occup. Load, 23 persons (including children).

7. Remove and refrain from using AT ANYTIME (with or without operation of the warming center), the "Use Other Door" bar placed over the panic hardware device on the south leaf of the east exit doors next to the Fellowship Hall (as said device renders the panic hardware inoperable).
8. DO NOT install "scissor gate" (or any other type of locking gate) on hallway entrances adjacent to the Fellowship Hall (as proposed on the submitted "Warning Center Layout"). A temporary non-attached, non-locked screening partition may be utilized, but ONLY when the warming center is in active operation AND conditional upon the church installing and maintaining the following sign(s) adjacent to hallway entrances wherein the temporary screens are to be used: "Temporary partitions allowed here ONLY when warming center is operating, by order of the North Bend Fire Chief." Sign(s) to be provided by the North Bend Fire Department.
9. Refrain from frying or any form of oil-based cooking on the stove tops at ANYTIME (with or without operation of the warming center). Place sign in the kitchen the above stoves which reads: "Stoves for warming purposes only – NOT for frying or oil-based cooking." Sign to be provided by the North Bend Fire Department.
10. Install and maintain smoke and carbon monoxide detectors on the ceiling of both the east and west sections of the fellowship hall.
11. Utilizing the "Warming Center Layout" map, show the location of the smoke and carbon monoxide detectors, highlight the exit doors, and draw the exit pathways out of the building with arrows and post this "Emergency Evacuation Plan" on the walls of both the east and west sections of the fellowship hall.
12. Each night the warming center is operated, maintain, in a readily available location (for fire department use), an up-to-date roster of occupants spending the night.
13. Notify the North Bend Fire Chief in advance each time the church plans on opening and operating the warming center. Unannounced inspections by the North Bend Fire Department may be conducted and should be expected.
14. Place "EXIT" signs above the two southern exit doors to the fellowship hall. Signs shall be illuminated and have backup power or may have photo luminescent letters.
15. Remove and refrain from placing trash cans and the pew within the exit pathway adjacent to the fellowship hall.
16. Lighting on-site shall comply with "dark sky" standards and be properly shielded to prevent light pollution off-site, as such is prohibited in the NBCC18.68.060(g) *"Artificial lighting which may be provided shall be deflected so as not to shine directly into adjoining dwellings or other types of living units and so as not to create a hazard to the public use of a street."*
17. Provide staff with evidence of having obtained all proper Coos County Environmental Health Department licensing and inspections prior to issuance of use occupancy permit.

18. Restrict the warming center clientele to families with children (under 18), with possible openings for senior citizens (over 65), and handicapped.
 19. Maintain a list of homeless families/seniors who could be served at the warming center.
 20. Make no public notification of open nights (no signs or public-address messages) and no meals available to the public, except for those on the list who are staying at the warming center.
 21. For individuals on-site who are not offered warming center services, provide van transportation to the Devereux Center, or other similar facility that provides services for homeless.
 22. Operate the warming center only when NOAA predicts temperatures to be at 36° Fahrenheit or below, or when winds reach forty (40) miles per hour or greater.
 23. Notify both City of North Bend Fire Department and Police Department on any night the warming center is open so that they will be prepared in the event a situation or emergency arises.
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III. Conclusion.

For all of the reasons set forth above, the hearings officer recommends that the City Council APPROVE the Appeal and APPROVE the Application on a temporary basis (i.e. with an expiration date of March 15, 2019).

Respectfully submitted this 1st day of June, 2018.

ANDREW H. STAMP, P.C.

Andrew H. Stamp

Andrew H. Stamp
Hearings Officer

Chapter 18.58 EMERGENCY SHELTER OVERLAY ZONE

Sections:

18.58.010 Purpose.

18.58.020 Definitions.

18.58.040 Location.

18.58.060 Emergency shelter permit requirement.

18.58.080 Permit requirements.

18.58.100 Development and operational standards.

18.58.010 Purpose.

It is the intent of this chapter to provide for adequate development and operational standards to ensure appropriate housing and services for special needs populations are met. This chapter establishes an emergency shelter overlay zone within the existing heavy industrial district that shall be subject to the regulations set forth for the heavy industrial district zone as well as the regulations and requirements of this chapter. This chapter identifies an acceptable zone, in compliance with Senate Bill 2, where an emergency homeless shelter may be established without the need of a conditional use permit. (Ord. 782 (part), 2015; Ord. 736 (part), 2012).

18.58.020 Definitions.

“Emergency shelter” shall mean housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay (as defined by California Health and Safety Code Section [50801](#)(e)).

“Emergency shelter overlay zone” shall mean the parcels north of Sperry, west of S. 4th Street, and south of C Street.

“Habitable room” shall mean any room that meets adopted building code requirements for a habitable room, including minimum room proportions, minimum egress requirements, and minimum standards for lighting, ventilation, and electricity.

“Heavy industrial district” shall mean areas with industrial parks, warehouses, manufacturing, public and quasi-public uses, and similar and compatible uses as defined in Chapter [18.96](#). (Ord. 782 (part), 2015; Ord. 736 (part), 2012).

18.58.040 Location.

The city identifies the parcels of land north of Sperry, west of S. 4th Street, and south of C Street, as the acceptable zone for permitting the establishment of an emergency homeless shelter without requiring a conditional use permit.

This area is located within the zone designated as a "heavy industrial district." The city amends the zoning code to create an overlay zone located exclusively on the parcel described above. An emergency shelter is a permitted use in this overlay zone. In addition to requirements set forth concerning heavy industrial districts, emergency shelters are subject to the requirements stated in this section. (Ord. 782 (part), 2015; Ord. 736 (part), 2012).

18.58.060 Emergency shelter permit requirement.

Prior to operating an emergency shelter, a nondiscretionary permit shall be obtained and all other applicable local, state and federal laws, regulations and codes shall be met. The approval shall be specific to a location and shall not be transferable to any other location. The application shall be on a form prescribed for that purpose, and shall include the written consent of the owner of the property on which the shelter is to be located. The permit shall be recorded on the property and shall run with the land. (Ord. 782 (part), 2015; Ord. 736 (part), 2012).

18.58.080 Permit requirements.

A. Once an application has been accepted as complete, the community development director or designee shall take action within thirty days.

B. Once an application has been accepted as complete, the community development director or designee shall refer the permit application to city departments and any other agencies deemed appropriate by the community development director.

C. In considering an application for a permit pursuant to this section, the application shall meet all of the following standards:

1. The application shall be for an "emergency shelter" as defined in the California Health and Safety Code Section [50801\(e\)](#).
2. The property must be located within the emergency shelter overlay zone.
3. Emergency shelter facilities shall comply with all federal and California state licensing requirements.
4. Emergency shelter facilities shall comply with all applicable Uniform Building and Fire Codes, including maximum occupancy restrictions.
5. Maximum Number of Beds. No more than twenty-five beds shall be provided in any single emergency homeless shelter facility. (Ord. 782 (part), 2015; Ord. 736 (part), 2012).

18.58.100 Development and operational standards.

Emergency shelter facilities shall comply with all standards provided in this chapter.

A. Development Standards.

1. Location and Separation.
 - a. Emergency homeless shelter facilities shall be located in an emergency shelter overlay zone.
 - b. All shelter programs must be situated no less than three hundred feet from any other similar shelter program.
2. Physical Characteristics.

- a. The maximum number of beds for emergency and transitional housing shall be twenty-five.
- b. Smoke detectors, approved by the Patterson fire chief, must be provided in all sleeping and food preparation areas.
- c. The facility shall have adequate private living space, shower and toilet facilities and secure storage areas for its intended residents.
- d. The size of an emergency facility shall be in character with the surrounding neighborhood.
- e. The facility shall have at least one room, which has one hundred twenty square feet of floor area. Other habitable rooms shall have an area not less than seventy square feet. When more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of fifty square feet for each occupant in excess of two.

B. Operational Standards.

1. If located within one hundred fifty feet of a residential zoning district, all outdoor activity and intake areas shall be screened from public view and from the view of adjacent properties.
2. If the program includes a drug or alcohol abuse counseling component, appropriate state and/or federal licensing shall be required.
3. Adequate lighting shall be provided in all parking, pedestrian paths, and entry areas. Lights shall be shielded and reflected away from adjacent uses.
4. Off-street parking shall be provided at a rate of one vehicle parking space per employee/volunteer plus one vehicle parking space for every ten beds.
5. Adequate management, support staff and security must be present during the hours of operation of the facility. A minimum of one supervisory level staff member must be present on the site during hours of operation. Management staff must make best efforts to ensure that loitering does not occur on the property during off-hours and must ensure that clients are not creating a nuisance to the neighborhood.
6. A security guard/officer must be provided during the intake period. The shelter shall have set hours of operation and the hours shall be posted in a publicly visible and accessible location.

C. Management Plan.

1. The shelter shall prepare and file with the city a management plan that includes but is not limited to:
 - a. A resident identification process;
 - b. Timing and placement of outdoor activities;
 - c. Standards governing expulsions;
 - d. Hours of operation and standard lights-out;
 - e. Loitering control;

f. Policies regarding safety and security.

D. Shelter Approval.

1. The city shall not deny an emergency shelter proposed in the appropriately designated zone unless it makes findings that:

- a. The city has met or exceeded the need for emergency shelters in its community.
- b. The emergency shelter would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development of the emergency shelter financially infeasible. As used in this subsection, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.
- c. The denial of the shelter or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development of the emergency shelter financially infeasible.
- d. The emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.
- e. The emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with California Government Code Section [65588](#) that is in substantial compliance with state law.

E. Severability. In the event that any portion of this chapter is rendered or declared invalid, the remaining portions of this chapter shall remain in full force and effect. (Ord. 782 (part), 2015; Ord. 736 (part), 2012).

Home

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The Patterson Municipal Code is current through Ordinance 815, and legislation passed through December 19, 2017.

Disclaimer: The City Clerk's Office has the official version of the Patterson Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.ci.patterson.ca.us/>

City Telephone: (209) 895-8014

[Code Publishing Company](#)

Table 120-1
Multi-Dwelling Zone Primary Uses

Use Categories	R3	R2	R1	RH	RX	IR
Residential Categories						
Household Living	Y	Y	Y	Y	Y	Y
Group Living	L/CU [1]	L/CU [1]	L/CU [1]	L/CU [1]	L/CU [1]	Y [1]
Commercial Categories						
Retail Sales And Service	N	N	N	CU[2]	L/CU [3]	L/CU [10]
Office	N	N	N	CU[2]	L/CU [3]	L/CU [10]
Quick Vehicle Servicing	N	N	N	N	N	N
Vehicle Repair	N	N	N	N	N	N
Commercial Parking	N	N	N	N	CU [4]	N
Self-Service Storage	N	N	N	N	N	N
Commercial Outdoor Recreation	N	N	N	N	N	N
Major Event Entertainment	N	N	N	N	N	CU
Industrial Categories						
Manufacturing And Production	N	N	N	N	N	CU
Warehouse And Freight Movement	N	N	N	N	N	N
Wholesale Sales	N	N	N	N	N	N
Industrial Service	N	N	N	N	N	CU
Railroad Yards	N	N	N	N	N	N
Waste-Related	N	N	N	N	N	N
Institutional Categories						
Basic Utilities	L/CU [13]	L/CU [13]	L/CU [13]	L/CU [13]	L/CU[13]	L/CU [13]
Community Service	L/CU [6]	L/CU [6]	L/CU [6]	L/CU [6]	L/CU [5,-6]	L/CU [6]
Parks And Open Areas	L/CU [7]	L/CU [7]	L/CU [7]	Y	Y	Y
Schools	CU	CU	CU	CU	L/CU [5]	L/CU [11]
Colleges	CU	CU	CU	CU	CU	L/CU [11]
Medical Centers	CU	CU	CU	CU	CU	L/CU [11]
Religious Institutions	CU	CU	CU	CU	CU	CU
Daycare	L/CU [8]	L/CU [8]	L/CU [8]	L/CU [8]	Y	L/CU [12]
Other Categories						
Agriculture	L [14]	L [14]	L [14]	L [14]	L [14]	L [14]
Aviation And Surface Passenger Terminals	N	N	N	N	N	N
Detention Facilities	N	N	N	N	N	N
Mining	N	N	N	N	N	N
Radio Frequency Transmission Facilities	L/CU [9]	L/CU [9]	L/CU [9]	L/CU [9]	L/CU [9]	L/CU [9]
Rail Lines And Utility Corridors	CU	CU	CU	CU	CU	CU

Y = Yes, Allowed

L = Allowed, But Special Limitations

CU = Conditional Use Review Required

N = No, Prohibited

Notes: [No change.]

Table 140-1
Employment and Industrial Zone Primary Uses

Use Categories	EG1	EG2	EX	IG1	IG2	IH
Residential Categories						
Household Living	CU	CU	Y	CU [1]	CU [1]	CU [1]
Group Living	CU	CU	L/CU [2]	N	N	N
Commercial Categories						
Retail Sales And Service	L/CU [3]	L/CU [3]	Y	L/CU [4]	L/CU [5]	L/CU [6]
Office	L [3]	L [3]	Y	L/CU [4]	L/CU [5]	L/CU [6]
Quick Vehicle Servicing	Y	Y	N	Y	Y	Y
Vehicle Repair	Y	Y	Y	Y	Y	Y
Commercial Parking	CU [15]	CU [15]	CU [15]	CU [15]	CU [15]	CU [15]
Self-Service Storage	Y	Y	L [7]	Y	Y	Y
Commercial Outdoor Recreation	Y	Y	Y	CU	CU	CU
Major Event Entertainment	CU	CU	CU	CU	CU	CU
Industrial Categories						
Manufacturing And Production	Y	Y	Y	Y	Y	Y
Warehouse And Freight Movement	Y	Y	Y	Y	Y	Y
Wholesale Sales	Y	Y	Y	Y	Y	Y
Industrial Service	Y	Y	Y	Y	Y	Y
Railroad Yards	N	N	N	Y	Y	Y
Waste-Related	N	N	N	L/CU [8]	L/CU [8]	L/CU [8]
Institutional Categories						
Basic Utilities	Y/CU [12]	Y/CU [12]	Y/CU [12]	Y/CU [13]	Y/CU [13]	Y/CU [13]
Community Service	L/CU [9]	L/CU [9]	L/CU [10]	L/CU [11]	L/CU [11]	L/CU [11]
Parks And Open Areas	Y	Y	Y	Y	Y	Y
Schools	Y	Y	Y	N	N	N
Colleges	Y	Y	Y	N	N	N
Medical Centers	Y	Y	Y	N	N	N
Religious Institutions	Y	Y	Y	N	N	N
Daycare	Y	Y	Y	L/CU [11]	L/CU [11]	L/CU [11]
Other Categories						
Agriculture	L [16]	L [16]	L [16]	L [16]	L [16]	L [16]
Aviation And Surface Passenger Terminals	CU	CU	CU	CU	CU	CU
Detention Facilities	CU	CU	CU	CU	CU	CU
Mining	N	N	N	CU	CU	CU
Radio Frequency Transmission Facilities	L/CU [14]	L/CU [14]	L/CU [14]	L/CU [14]	L/CU [14]	L/CU [14]
Rail Lines And Utility Corridors	Y	Y	Y	Y	Y	Y

Y = Yes, Allowed

L = Allowed, But Special Limitations

CU = Conditional Use Review Required

N = No, Prohibited

Notes:

The use categories are described in Chapter 33.920.

Regulations that correspond to the bracketed numbers [] are stated in 33.140.100.B.

Specific uses and developments may also be subject to regulations in the 200s series of chapters.

Zoning for Shelter for the Homeless

Overview of Homeless Need in Menlo Park And State Law Requirements

Every other year, San Mateo County along with many other stakeholders, conducts a homeless count. The last count, which is also referenced in the recently adopted Housing Element, was conducted on January 24, 2013. The count found 16 (unsheltered) homeless people living in Menlo Park and 142 homeless residents in shelters, institutions, motel voucher programs, etc. Zoning for a homeless facility must address the unmet need established in the Housing Element.

Effective January 1, 2008, SB 2 (Chapter 633, Statutes of 2007) requires every California city and county to engage in a detailed analysis of emergency shelters and transitional and supportive housing in their Housing Element and to regulate zoning for these facilities. SB2 requires jurisdictions to explicitly recognize emergency, transitional and supportive housing in their zoning code. As part of the City's recently adopted Housing Element, specific implementation programs were identified to address this requirement.

General Plan Housing Element

The Menlo Park Housing Element contains the following policy and implementing program related to zoning for a homeless facility.

Housing Element Policy H3.9

"Local Approach to Housing for the Homeless. The City of Menlo Park supports a "housing first" approach to addressing homeless needs, consistent with the Countywide HOPE Plan. "Housing first" is intended to provide homeless people with housing quickly and then provide other services as needed, with a primary focus on helping individuals and families quickly access and sustain permanent housing. The City also recognizes the need for and desirability of emergency shelter housing for the homeless and will allow a year-round emergency shelter as a permitted use in specific locations to be established in the Zoning Ordinance. Designated site(s) must be located within one-quarter mile of a bus stop that provides service 7 days a week, since this could be considered a reasonable distance for a person to walk to/from a bus stop.



August 6, 2013



Safe Harbor Shelter, South San Francisco, CA



Homeless Facility (with solar), Santa Monica, CA



Congregational Church of San Mateo County, Rotating Shelter, San Mateo, CA

In addition, the following would apply:

- a. The City will encourage a dispersion of facilities to avoid an over-concentration of shelters for the homeless in any given area. An over-concentration of such facilities may negatively impact the neighborhood in which they are located and interfere with the “normalization process” for clients residing in such facilities.
- b. The City will encourage positive relations between neighborhoods and providers of permanent or temporary emergency shelters. Providers or sponsors of emergency shelters, transitional housing programs and community care facilities shall be encouraged to establish outreach programs within their neighborhoods and, when necessary, work with the City or a designated agency to resolve disputes.
- c. It is recommended that a staff person from the provider agency be designated as a contact person with the community to review questions or comments from the neighborhood. Outreach programs may also designate a member of the local neighborhood to their Board of Directors. Neighbors of emergency shelters shall be encouraged to provide a neighborly and hospitable environment for such facilities and their residents.
- d. Development standards for emergency shelters for the homeless located in Menlo Park will ensure that shelters would be developed in a manner which protects the health, safety and general welfare of nearby residents and businesses, while providing for the needs of a segment of the population as required by State law. Shelters shall be subject only to development, design review and management standards that apply to residential or commercial development in the same zone, except for the specific written and objective standards as allowed in State law.”



Cloverfield Services Center, Santa Monica, CA



Homeless Facility, Jackson, CA



First Step for Families, San Mateo, CA

Housing Element Program H3.A

“Zone for Emergency Shelter for the Homeless. The City will establish an overlay zone to allow emergency shelters for the homeless to address the City’s need for providing 16 beds to address homeless needs in the community. Appropriate locations for the overlay zoning will be evaluated based on land availability, physical or environmental constraints (e.g., flooding, chemical contamination, slope instability), location (e.g., proximity to services, jobs, and transit), available acreage (i.e., vacant or non-vacant sites), compatibility with surrounding uses and the realistic capacity for emergency shelters. In reviewing potential non-vacant sites, the potential for reuse or conversion of existing buildings to emergency shelters will be considered. Based on review of other facilities in the Bay Area, it is estimated that about one-quarter to one-half acre of land would be needed to address Menlo Park’s homeless needs. The overlay zone designation will cover between 1 to 3 acres of land to provide a choice of potential sites if and when a facility or multiple, smaller facilities are proposed. The City will also investigate the use of local churches providing temporary shelter for the homeless. In addition, the City will establish written and objective standards in the Zoning Ordinance covering:

- a. Maximum number of beds;
- b. Off-street parking based upon demonstrated need;
- c. Size and location of on-site waiting and intake areas;
- d. Provision of on-site management;
- e. Proximity to other shelters;
- f. Length of stay;
- g. Lighting; and
- h. Security during hours when the shelter is open.

Responsibility: Planning Division; City Attorney; City Commissions; City Council

Financing: General Fund

Objectives: Amend the Zoning Ordinance.¹

Timeframe: 2014”

Overview of Homeless Facilities

State law requires jurisdictions to explicitly recognize emergency shelters in their zoning code. In addition, emergency shelters for the homeless are uses protected under the Housing Accountability Act. The Housing Accountability Act (Government Code Section 65589.5) prohibits a jurisdiction from disapproving a housing development project, including housing for very low, low, or moderate income households, or conditioning approval in a manner that renders the project infeasible for development for the use of very low, low, or moderate income households, including through the use of design review standards, unless it makes specific written findings based on substantial evidence in the record (Government Code Section 65589.5).

Definition of Emergency Shelters (Health and Safety Code Section 50801(e)): “Emergency shelter” means housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay.

Overview of Homeless Regulations

State law requires that within one year of adoption of the Housing Element the City must rezone to allow an emergency shelter for the homeless in at least one zone without a conditional use permit or other discretionary action. Jurisdictions may not require a variance, minor use permit, special use permit or any other discretionary process, although they may apply non-discretionary design review standards. Because of State law, the areas that jurisdictions can regulate are limited and, according to HCD, the regulations must be “predictable and objective” and “encourage and facilitate” the development of shelters. The City is allowed to establish standards covering the number of beds, off-street parking, size and location of exterior and interior on-site waiting and client intake areas, on-site management, proximity to other emergency shelters (provided that emergency shelters are not required to be more than 300 feet apart), length of stay, lighting and security. Standards must (1) “promote” the use and be objective and predictable, (2) must not render emergency shelters infeasible and (3) must only address the use as an emergency shelter, not the perceived characteristics of potential occupants. The homeless shelter may also be subject to certain development standards that match the zoning district (e.g. lot area, height and setbacks).

¹ There must be a realistic potential for redevelopment or reuse within the proposed zone and it must be an appropriate location for a shelter, with access to transportation and services. Within this zone, shelters must be permitted without a conditional use permit or other discretionary action and shelters must be subject to the same development and management standards as other residential or commercial uses within the same zone.

These potential areas of regulation are discussed in more detail below.

(1) MAXIMUM NUMBER OF BEDS. State law specifically allows jurisdictions to regulate the number of beds in an emergency shelter. At the same time, it says limits on the numbers of beds must “facilitate,” “promote,” and “encourage” new emergency housing. There are a couple of ways to approach the bed limits. Homeless shelters in San Mateo County range from six beds to 87 beds, with the median number being 22 beds. Menlo Park, which has a low demonstrated need could set the maximum shelter size the same as their need (16 beds).

(2) OFF-STREET PARKING BASED UPON DEMONSTRATED NEED. The standards may not require more parking for emergency shelters than for other residential or commercial uses within the same zone. Parking is needed for employees, volunteers/visitors and residents. Most homeless families will have a car while most homeless individuals will not. The rule of thumb that InnVision Shelter Network uses is one car per family or .35 cars per individual bed, plus one parking spot per staff member on duty when residents are there (but less if on major a transit route). Homeless shelters that serve the chronically homeless or the mentally ill will have lower parking needs. As a comparison, available parking spaces for various emergency shelters are summarized below:

- Crossroads (Oakland), 0.55 acres, 125 residents, 47 employees, 17 parking spaces
- Family Emergency Center, (San Rafael), 0.25 acres, 52 beds, 16 spaces
- Mill Street Shelter (San Rafael) 0.33 acres, 40 beds, 10 spaces
- Safe Harbor (S. San Francisco), 90 beds, 24 spaces (parking lot is full at night)

(3) SIZE AND LOCATION OF EXTERIOR AND INTERIOR ON-SITE WAITING AND CLIENT INTAKE AREAS. Most ordinances do not have minimum size requirements for waiting and client intake areas, but this is an important topic. According to the Center on Homelessness and other experts, a common design flaw in shelters is to have too little public/communal space or office space. Having adequate waiting/ communal/gathering areas will reduce the likelihood of loitering and smoking off the property.

Communal areas also give space for volunteers to stage and donations to be accepted and sorted. Based on experiences at InnVision Shelter Network, roughly ten square feet per bed is needed. The Safe Harbor facility in South San Francisco recommends roughly two offices or cubicles for each 20 clients. At least one office or up to 25 percent of the offices should also be private. In addition to shelter staff, partner organizations often use the office to provide client services.



Upward Bound House, Culver City, CA

(4) THE PROVISION OF ON-SITE MANAGEMENT. Most ordinances require on-site management when the shelter is open (i.e. has clients at the facility). There are many topics to include in a good management plan, including:

- Client smoking areas and policies
- Volunteer and donation procedures
- Health and Safety plan including emergencies
- Neighborhood communication plan

One useful tool for ensuring a thorough management plan is the Quality Assurance Standards recently produced by the HOPE Quality Improvement Work Group. This document describes both minimal and higher level (desirable) standards and procedures for all aspects of



San Francisco Emergency Shelter, San Francisco, CA

operating a homeless facility. The City may want to require that management plans consider and address the Quality Assurance Standards. A stronger approach would be to require that the management plan meet the relevant minimum standards.

(5) THE PROXIMITY TO OTHER EMERGENCY SHELTERS. State law allows jurisdictions to establish a 300 feet distance between facilities.

(6) THE LENGTH OF STAY. A standard definition is 30 or 60 days. Ordinances should allow a set length of time with an extension possible if there is no other housing available. For example, temporary shelter shall be available to residents for no more than 60 days but extensions up to a total stay of 180 days may be provided if no alternative housing is available.

(7) LIGHTING. It is difficult to write a lighting ordinance that does not include some degree of subjectivity. “Adequate” lighting may not meet the standard for objectivity as required by law. An alternate definition to consider is — “The lighting shall be sufficient to provide illumination and clear visibility to all outdoor areas, with minimal shadows or light leaving the property. The lighting shall be stationary, directed away from adjacent properties and public rights-of-way, and of intensity compatible/comparable with the neighborhood.”

An alternate standard for lighting would be to use the AB 244 rules (California Financial Code Section 13040-13041), which were written in 1991 to reduce crime at outdoor ATM machines. While objective, these rules have received mixed reviews. Some experts credit the regulations for reducing crime, others believe the standards rely too much on sheer brightness, creating glare and other problems. Adapted for shelters, the rules would read — “There shall be a minimum of 10 candlefoot power at the ~~face of the automated teller machine~~ *door of the shelter* and extending in an unobstructed direction outward five feet... There shall be a minimum of two candlefoot power...*in other areas of the front yard.*” The State definition for candlefoot power is the light intensity of candles on a horizontal plane at 36 inches above ground level and five feet in front of the area to be measured. The hours of darkness are defined as the period beginning 30 minutes after sunset and ending 30 minutes before sunrise.

It may be possible to offer shelters the option of meeting the AB 244 standards or providing adequate external lighting, giving both an objective standard and a more conventional planning definition.

(8) SECURITY DURING HOURS OF OPERATION. Most shelters do not admit dangerous clients, will work to quickly deescalate potentially dangerous situations, and will call the police if a client poses a threat. Staff members are told not to engage or restrain dangerous clients. Still, best practices call for shelters to have a security/emergency plan.

(9) NON-DISCRETIONARY DESIGN STANDARDS. Traditionally, homeless shelters were seen as basic, utilitarian housing for the poor. They were often crowded and lacked basic design amenities. Recently, there has been an effort to raise the standards of homeless shelters to make them fit in better with the neighborhood and be more inspirational places for the clients.

Some specific design guidelines include:

- Shelters should have designated smoking areas not visible from the street, ideally outside.
- There should be no space for outdoor congregating in front of the building and no outdoor public telephones.
- There should be a refuse area screened from view.
- The shelter should have disabled access.

- There should be bicycle parking.
- Other design standards that apply to residential buildings.

(10) OTHER DEVELOPMENT STANDARDS. The shelter may be subject to objective standards applied to other uses in the zone. For instance, FAR, setback, height, lot area, etc. could be covered. In addition, HCD suggests there may be some flexibility for additional standards that are the same as other residential uses in the zone. For instance, if residential uses require outdoor space, the standard could be applied to shelters. In recent years, many jurisdictions have required amenities at homeless shelters, but based on a strict reading of the law, these should now be treated as optional or desired, rather than required. The best source of standards is the recently published Quality Assurance Standards referenced above. Sample best practices from this material include:

- Outdoor gathering space and smoking space is important
- Laundry facilities or tokens to local laundry
- Safe storage for belongings (this is definitely desirable but can be a management challenge). Ideally storage should be located at the beds
- Toiletries (soap, toilet paper)
- Clean drinking water
- Phone to make free local calls and/or outlets to charge cell phones
- Shared/communal areas for socializing
- Hiring a diverse staff, and training -for staff in how to interact with gay/lesbian/transgender populations and people with disabilities
- Assistance finding permanent housing
- Classes or training for important life skills
- Family shelters need play areas
- Interior lighting should be dimmable for nighttime use

Background on Possible Criteria for Zoning for Shelter for the Homeless

Below are possible factors (or criteria) to consider in Menlo Park for the location of appropriate zoning for emergency shelter for the homeless. This initial list can provide a starting point for discussion at the Steering Committee's first meeting.

- (1) **Is the location suitable for a residential use of this kind?** What other uses are permitted in the underlying zoning and is the underlying zoning suitable for residential or emergency shelters (e.g., an industrial zone with manufacturing activities may have environmental conditions rendering it unsuitable for residential or shelter uses. In some localities, manufacturing or industrial zones may be in transition, where older industrial uses are redeveloping to residential, office or commercial). Quality residential locations should consider the following conditions:
 - a. High noise levels (traffic or from commercial activities)
 - b. Hazards (toxic soils, etc.)
 - c. Compatibility with the operation of adjacent uses — ensure neighborhood livability, physical compatibility, function of the area and public services.
- (2) **Are there transitional areas that might be acceptable for a homeless facility?** Transition areas may be compatible with residential uses and suitable for emergency shelters. Also, a commercial zone allowing



Maple Street Shelter, Redwood City, CA

residential or residential compatible services (i.e., social services, offices) could be suitable for shelters. For example, Sacramento County permits emergency shelters in its commercial zone along with other residential uses and uses such as retail that are compatible with residential.

- (3) **Is there sufficient capacity to accommodate the need?** The identified overlay zone must have sufficient capacity, when taken as a whole, to meet the need for shelters identified in the housing element, and have a realistic potential for development or reuse opportunities in the planning period. Sub-factors related to the ability to accommodate the need include:
 - a. **Minimum site area required.** Are there sites in the area zoned that can accommodate a facility on one-quarter to one-half of an acre to accommodate the facility and parking demand?
 - b. **Choices of sites.** Are there sites available and appropriately zoned for a homeless facility?
 - c. **Site development constraints.** Capacity for emergency shelters must be suitable and available and account for physical features (flooding, seismic hazards, chemical contamination and other environmental constraints, and slope instability or erosion).
- (4) **Location and proximity to services.** Access to supportive services, community services and transportation should be considered. Residents generally need ready access to community services such as shopping, transportation and health care. One example would be a requirement that a facility be located within one-quarter mile of bus stop. Another example would be the location in proximity of a facility that operates to serve the homeless population, such as a jobs center or other service locations.
- (5) **Is there sufficient acreage and realistic capacity?** Zoning must also address available acreage (vacant or underutilized) and the realistic capacity for emergency shelters in the zone. For example, if a jurisdiction identifies public institution zoning district as the zone where emergency shelters will be allowed without a conditional use permit, the Housing Element should demonstrate sufficient acreage within the zoning district that could accommodate the actual development of an emergency shelter. The Housing Element could also discuss the potential for reuse or conversion of existing buildings to emergency shelters.
- (6) **Concentration of emergency facilities.** Generally, cities that have numerous residential care facilities try to control the close concentration of emergency facilities to ensure (1) a fair distribution of residential care facilities, (2) prevent the perceived “institutionalized ghetto” affect that occurs when social service providers concentrate their facilities in one location, and (3) better serve the homeless by integrating them into functioning communities and removing them from negative influences.
- (7) **Minimum distance to sensitive uses.** Possible examples of sensitive uses include day care facilities, schools and parks. Consultation should also with the Police Department on current criminal activity of proposed placement location area.
- (8) **Service population.** Homeless shelters often focus on certain service populations. Examples of service population are single individuals, youth (under 18 years), families, and mixed populations. Zoning may differentiate among these groups in terms of specific locations and standards, but all groups need to be served.

CURRY COUNTY

DEMOGRAPHIC & HOUSING PROFILES



Population	Curry	Oregon	United States
Total (2015 est.)	22,483	4,028,977	312,418,820
# Change since 2010	119	197,903	12,673,282
% Change since 2010	0.5%	5.2%	4.1%

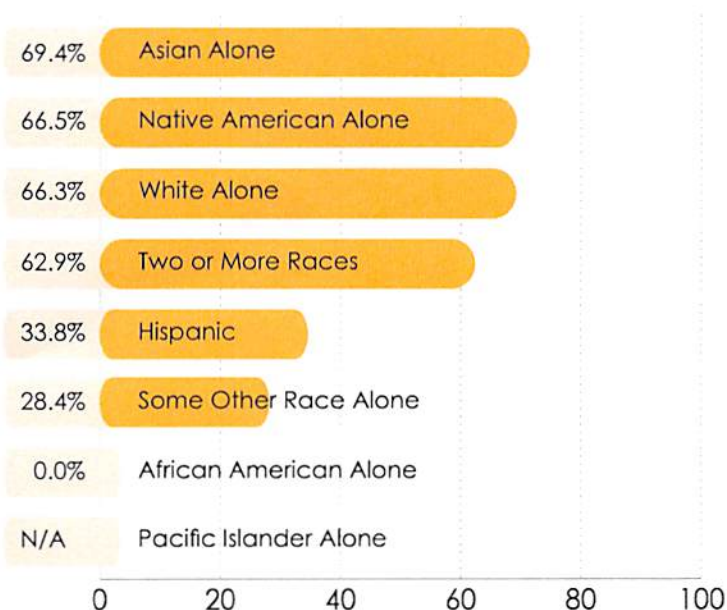
Median Rents, 2012-2016



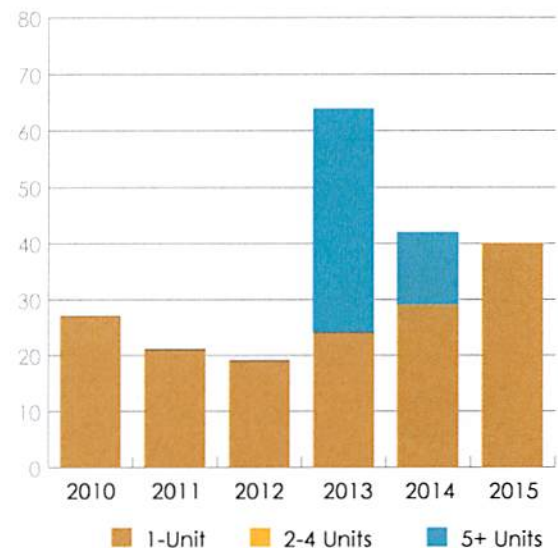
Vacancy Rates, 2011-2015



Homeownership Rates by Race/Ethnicity, 2011-2015



Building Permits Issued in County



CURRY COUNTY

Employment and Industry Growth

Jobs by Industry	2015	% Change Since 2009	2015 Average Wage
Natural Resources	619	-9.2%	\$37,581
Construction	417	-53.7%	\$32,932
Manufacturing	456	-7.9%	\$47,484
Wholesale Trade **	43	-67.2%	\$31,183
Retail Trade**	993	-18.3%	\$31,183
Transportation **	332	-8.3%	\$31,183
Information	113	-16.9%	\$31,294
Finance	321	-39.5%	\$33,714
Professional, Scientific	368	-13.2%	\$59,437
Education, Healthcare	1,960	41.7%	\$28,924
Leisure, Hospitality	877	-34.9%	\$16,498
Public Administration	863	18.4%	\$19,842
Other Services	568	-3.4%	\$50,061
Total	7,930	-11.1%	

** Combined average wage shown per BLS.

Median Home Sales by Region, 2015

Oregon Region*	Sales Price
Curry County	\$191,614**
Central	\$276,545
Eastern	\$143,468
Gorge	\$238,045
North Coast	\$221,895
Portland Metropolitan Statistical Area	\$315,632
South Central	Not Available
Southwestern	\$212,159
Willamette Valley	\$217,611

*Regions are defined on the back cover

** This is the Zillow Home Value Index Estimate as of December 2015

6.9%

Curry County

4.9%

Oregon

Unemployment Rates, 2016

\$13.35

Curry County's mean renter wage

\$16.46

The hourly wage needed to afford a 2-bedroom apartment at HUD's Fair Market Rent.



Sixty-six hours per week at minimum wage is needed to afford a 2-bedroom apartment.

1 out of 5



of all renters are paying more than 50% of their income in rent

2 out of 3



renters with extremely low incomes are paying more than 50% of their income in rent

CURRY COUNTY

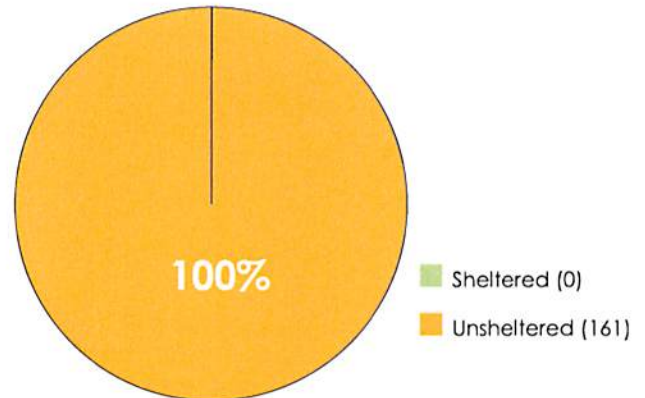
Shortage of Affordable Units, 2010-2014

Renter Affordability	< 30% MFI	< 50% MFI	< 80% MFI
Renter Households	690	1,110	1,785
Affordable Units	425	950	2,655
Surplus / (Deficit)	(265)	(160)	870
Affordable & Available*	160	545	1,585
Surplus / (Deficit)	(530)	(565)	(200)

*Number of affordable units either vacant or occupied by person(s) in income group.

Owner Affordability	... for MFI	.. for 80% MFI	.. for 50% MFI
Max Affordable Value	\$192,042	\$153,633	\$96,021
% of Stock Affordable	42.6%	29.9%	20.0%

Point-in-Time Homelessness, 2017 Curry County: Total 161



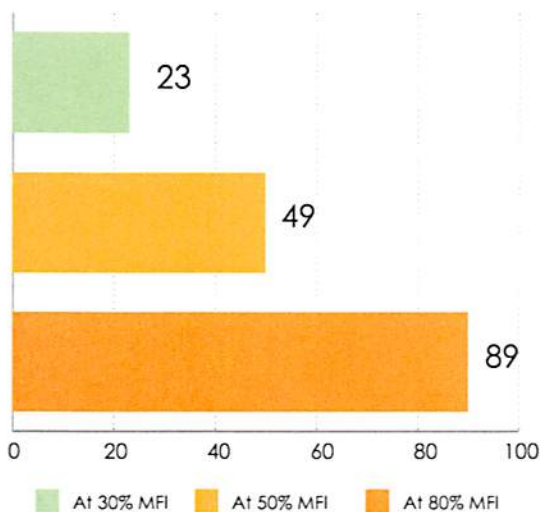
\$49,170

Curry County's
Median Family Income (MFI)

Poverty Rates, 2011-2015



Affordable and Available Rental Homes per 100 Renter Households, 2015

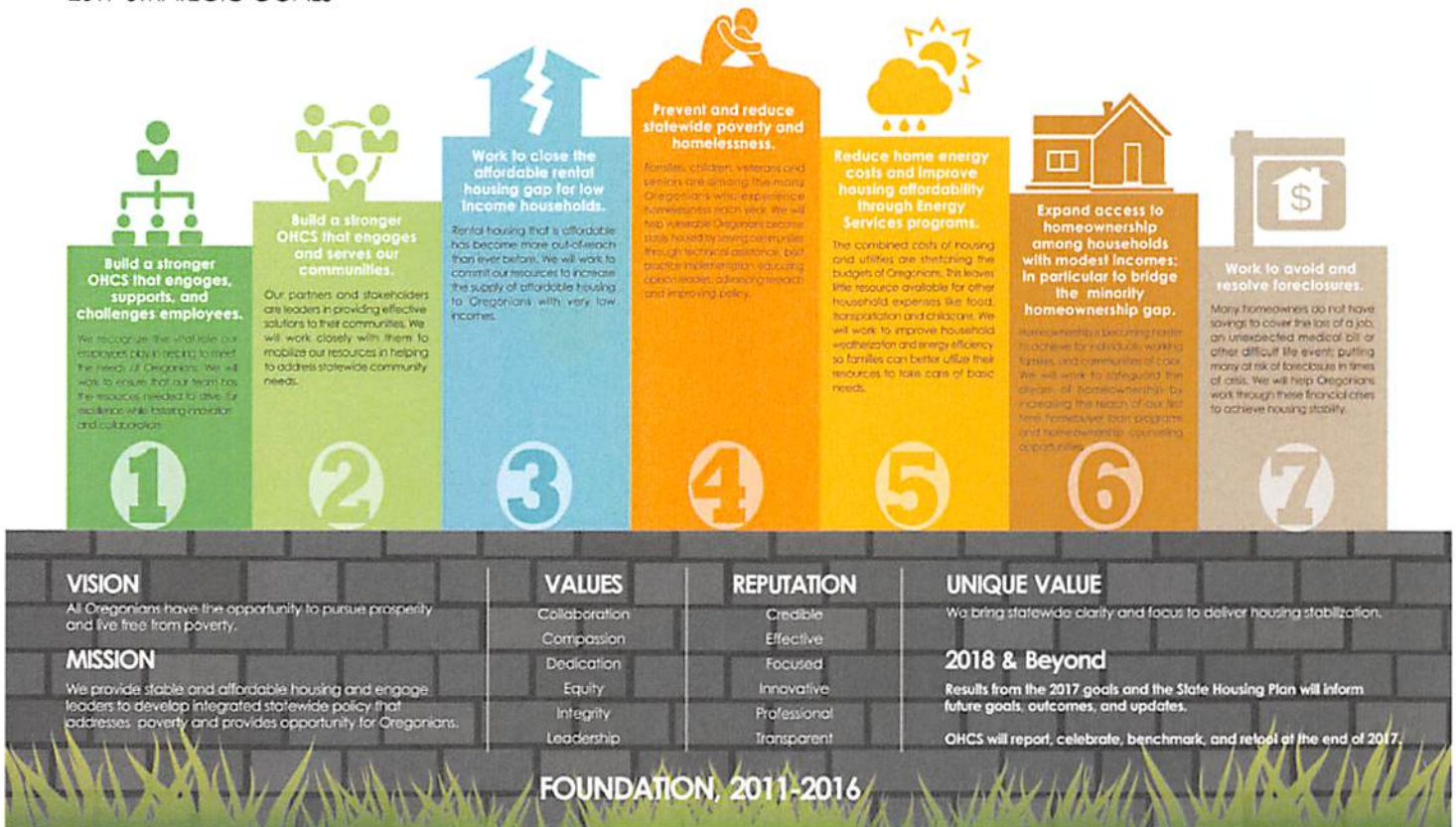


Self-Sufficiency Standard for Select Counties and Family Types, 2014

	One Adult	One Adult One Preschooler	Two Adults One Preschooler One School-Age
Curry	\$20,093	\$32,537	\$44,849
Deschutes	\$20,631	\$40,088	\$49,572
Jackson	\$19,728	\$37,497	\$47,587
Jefferson	\$18,480	\$26,610	\$41,345
Lane	\$19,892	\$43,125	\$60,005
Marion	\$19,642	\$31,149	\$43,779
Multnomah	\$19,993	\$47,037	\$65,027
Polk	\$19,962	\$31,281	\$44,561
Washington	\$24,353	\$47,571	\$65,800
Yamhill	\$22,635	\$39,305	\$49,635

OREGON HOUSING AND COMMUNITY SERVICES

2017 STRATEGIC GOALS



Data Sources

Page 1:

Population Estimates: U.S. Census Bureau, Annual Population Estimates, 2010 and 2015
 Homeownership Rates by Race/Ethnicity: U.S. Census Bureau, 2011-2015 American Community Survey Estimates
 Median Rents: Zillow Rent Index, 2010-2016
 Vacancy Rates: U.S. Census Bureau, 2011-2015 American Community Survey Estimates
 Building Permits: U.S. Census Bureau, Building Permit Survey, 2010-2015

Page 2:

Employment and Industry Growth: 2011-2015 American Community Survey Estimates and Oregon Employment Department, Employment and Wages by Industry
 Median Home Sales by Region: RMLS Data from Local Administrators, 2015
 Unemployment Rate: Oregon Employment Department, Unemployment Rates, 2016 Not Seasonally Adjusted
 Oregon's Renter Wage, Housing Wage, and Hours Needed to Work at Minimum Wage: National Low Income Housing Coalition, Out of Reach 2016
 Rent Burden Infographics: 2011-2015 American Community Survey Estimates

Regions:

Central: Crook, Deschutes, Jefferson
 Eastern: Baker, Gilliam, Grant, Harney, Malheur, Morrow, Umatilla, Union, Walla, Wheeler
 Gorge: Hood River, Sherman, Wasco
 North Coast: Clatsop, Columbia, Tillamook
 Portland Metropolitan Statistical Area: Clackamas, Multnomah, Washington
 South Central: Klamath, Lake
 Southwestern: Coos, Curry, Douglas, Jackson, Josephine
 Willamette Valley: Benton, Lane, Lincoln, Linn, Marion, Polk, Yamhill

Page 3:

Shortage of Affordable Units: HUD, 2010-2014 Comprehensive Housing Affordability Strategy Data
 Oregon's Median Family Income: 2011-2015 American Community Survey Estimates
 Affordable and Available Rental Homes per 100 Renter Households: HUD, 2010-2014 Comprehensive Housing Affordability Strategy Data
 Point-in-Time Homeless Count: 2017 Point-in-Time Count estimates from HUD Continuums of Care
 Poverty Rate: 2011-2015 American Community Survey Estimates
 Self-Sufficiency Standard for Select Counties and Family Types: The Center for Women's Welfare, The Self-Sufficiency Standard for Oregon, 2014



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 #oregonstatewidehousingplan

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: January 14, 2019

Originating Dept: Finance and Admin

Signature (submitted by)


City Manager Approval

Subject:

Authorizing a loan from the Special Public Works Fund with the Oregon Infrastructure Finance Authority of the Business Development Department (OBDD).

Recommended Motion:

Adopt Resolution 19-R-1151, authorizing a loan with OBDD for Salmon Run Occasion Hall and authorize the Mayor or City Manager to sign the financing agreement with OBDD.

Financial Impact:

The maximum loan is \$65,000 for 1.99%. \$50,000 will be paid over five years from the Tourism Fund. The remainder will be paid from the Parks SDC Fund.

Background/Discussion:

July 2018, the City Council approved allocating \$10,000 annually for five years from the Transient Occupancy Tax (TOT) funds from the Tourism Fund to construct an Occasion Hall at Salmon Run Golf Course.

November 2018, the City was awarded a loan from the Special Public Works Fund, by OBDD. The award consists of a loan of \$65,000, with an interest rate of 1.99% for a maximum of 7 years. OBDD requires the City to adopt this specific resolution authorizing the financing and an authorized officer to execute the financing contract. Attached is the resolution and contract.

Attachments:

Resolution 19-R-1151
OBDD Financing Contract

**CITY OF BROOKINGS
STATE OF OREGON**

RESOLUTION 19-R-1151

A RESOLUTION OF THE CITY OF BROOKINGS AUTHORIZING A LOAN FROM THE SPECIAL PUBLIC WORKS FUND BY ENTERING INTO A FINANCING CONTRACT WITH THE OREGON INFRASTRUCTURE FINANCE AUTHORITY.

WHEREAS, The City Council (the "Governing Body") of the City of Brookings (the "Recipient") finds:

A. The Recipient is a "municipality" within the meaning of Oregon Revised Statutes 285B.410(9).

B. Oregon Revised Statutes 285B.410 through 285B.482 (the "Act") authorize any municipality to file an application with the Oregon Infrastructure Finance Authority of the Business Development Department ("OBDD") to obtain financial assistance from the Special Public Works Fund.

C. The Recipient has filed an application with the OBDD to obtain financial assistance for a "development project" within the meaning of the Act.

D. The OBDD has approved the Recipient's application for financial assistance from the Special Public Works Fund pursuant to the Act.

E. The Recipient is required, as a prerequisite to the receipt of financial assistance from the OBDD, to enter into a Financing Contract with the OBDD, number X19003, substantially in the form attached hereto as Exhibit 1. The project is described in Exhibit C to that Financing Contract (the "Project").

F. Notice relating to the Recipient's consideration of the adoption of this Resolution was published in full accordance with the Recipient's charter and laws for public notification.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Recipient as follows:

1. Financing Loan Authorized. The Governing Body authorizes the Mayor or City Manager (the "Authorized Officer") to execute on behalf of Recipient the Financing Contract and such other documents as may be required to obtain financial assistance (the "Financing Documents"), including a loan from the OBDD, on such terms as may be agreed upon

between the Authorized Officer and OBDD, on the condition that the principal amount of the loan from the OBDD to the Recipient is not in excess of \$65,000 and an interest rate 1.99% per annum. The proceeds of the loan from the OBDD will be applied solely to the "Costs of the Project" as such term is defined in the Financing Contract.

2. Sources of Repayment. Amounts payable by the Recipient are payable from the sources described in section 4 of the Financing Contract and the Oregon Revised Statutes Section 285B.437(3) which include:

- (a) The revenues of the project, including special assessment revenues;
- (b) Amounts withheld under ORS 285B.449 (1);
- (c) The general fund of the Recipient; or
- (d) Any other source.

Passed by the City Council _____, 2019 ; effective _____.

Attest:

Mayor Jake Pieper

Interim Recorder Janell K. Howard

SPECIAL PUBLIC WORKS FUND DEVELOPMENT PROJECT
FINANCING CONTRACT

Project Name: Salmon Run Golf Course Event Center

Project Number: X19003

This financing contract ("Contract"), dated as of the date the Contract is fully executed, is made by the State of Oregon, acting by and through its Oregon Infrastructure Finance Authority of the Business Development Department ("OBDD"), and the City of Brookings ("Recipient") for financing of the project referred to above and described in Exhibit C ("Project"). This Contract becomes effective only when fully signed and approved as required by applicable law. Capitalized terms not defined in Section 1 and elsewhere in the body of the Contract have the meanings assigned to them by Exhibit A.

This Contract includes the following exhibits, listed in descending order of precedence for purposes of resolving any conflict between two or more of the parts:

Exhibit A	General Definitions
Exhibit B	Security
Exhibit C	Project Description
Exhibit D	Project Budget

SECTION 1 - KEY TERMS

The following capitalized terms have the meanings assigned below.

"Estimated Project Cost" means \$77,000.

"Interest Rate" means 1.99% per annum.

"Loan Amount" means \$65,000.

"Maturity Date" means the 6th anniversary of the Repayment Commencement Date.

"Payment Date" means December 1.

"Project Closeout Deadline" means 90 days after the earlier of the Project Completion Date or the Project Completion Deadline.

"Project Completion Deadline" means 36 months after the date of this Contract.

"Repayment Commencement Date" means the first Payment Date to occur after the Project Closeout Deadline.

SECTION 2 - FINANCIAL ASSISTANCE

OBDD shall provide Recipient, and Recipient shall accept from OBDD, financing for the Project specified below:

A non-revolving loan (the "Loan") in an aggregate principal amount not to exceed the Loan Amount.

Notwithstanding the above, the aggregate total of Financing Proceeds disbursed under this Contract cannot exceed the Costs of the Project.

SECTION 3 - DISBURSEMENTS

- A. Reimbursement Basis. The Financing Proceeds will be disbursed to Recipient on an expense reimbursement or costs-incurred basis. The Recipient must submit each disbursement request for the Financing Proceeds on an OBDD-provided or OBDD-approved disbursement request form ("Disbursement Request").
- B. Financing Availability. OBDD's obligation to make, and Recipient's right to request, disbursements under this Contract terminates on the Project Closeout Deadline.
- C. Payment to Contractors. OBDD, in its sole discretion, may make direct payment to suppliers, contractors and subcontractors and others for sums due them in connection with construction of the Project, instead of reimbursing Recipient for those sums.

SECTION 4 - LOAN PAYMENT; PREPAYMENT

- A. Promise to Pay. The Recipient shall repay the Loan and all amounts due under this Contract in accordance with its terms. Payments required under this Contract are, without limitation, payable from the sources of repayment described in the Act and this Contract, including but not limited to Exhibit B, and the obligation of Recipient to make all payments is absolute and unconditional. Payments will not be abated, rebated, set-off, reduced, abrogated, terminated, waived, postponed or otherwise modified in any manner whatsoever. Payments cannot remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project, commercial frustration of purpose, any change in the laws, rules or regulations of the United States of America or of the State of Oregon or any political subdivision or governmental authority, nor any failure of OBDD to perform any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with the Project or this Contract, or any rights of set off, recoupment, abatement or counterclaim that Recipient might otherwise have against OBDD or any other party or parties; provided further, that payments hereunder will not constitute a waiver of any such rights.
- B. Interest. Interest accrues at the Interest Rate on each disbursement from the date of disbursement until the Loan is fully paid. All unpaid interest accrued to the Repayment Commencement Date is (in addition to the first regular installment payment due) payable on the Repayment Commencement Date. Interest is computed by counting the actual days occurring in a 360-day year.

The Recipient authorizes OBDD to calculate accrued interest as necessary under this Contract, including for purposes of determining a loan amortization schedule or determining the amount of a loan prepayment or loan payoff. Absent manifest error, such calculations will be conclusive.

- C. Loan Payments. Starting on the Repayment Commencement Date and then on each succeeding Payment Date, Recipient shall make level installment payments of principal and interest, each payment sufficient to pay the interest accrued to the date of payment and so much of the principal as will fully amortize the Loan by the Maturity Date, on which date the entire outstanding balance of the Loan is due and payable in full.
- D. Loan Prepayments.
 - (1) Mandatory Prepayment. The Recipient shall prepay all or part of the outstanding balance of the Loan as required by this Contract.
 - (2) Optional Prepayment. The Recipient may prepay all or part of the outstanding balance of the Loan on any day except a Saturday, Sunday, legal holiday or day that banking institutions in Salem, Oregon are closed.

- E. Application of Payments. Regardless of any designation by Recipient, payments and prepayments by Recipient under this Contract or any of the Financing Documents will be applied first to any expenses of OBDD, including but not limited to attorneys' fees, then to unpaid accrued interest (in the case of prepayment, on the amount prepaid), then to the principal of the Loan. In the case of a Loan prepayment that does not prepay all the principal of the Loan, OBDD will determine, in its sole discretion, the method for how the Loan prepayment will be applied to the outstanding principal payments. A scheduled payment received before the scheduled repayment date will be applied to interest and principal on the scheduled repayment date, rather than on the day such payment is received.

SECTION 5 - CONDITIONS PRECEDENT

- A. Conditions Precedent to OBDD's Obligations. OBDD's obligations are subject to the receipt of the following items, in form and substance satisfactory to OBDD and its Counsel:
- (1) This Contract duly signed by an authorized officer of Recipient.
 - (2) A copy of the ordinance, order or resolution of the governing body of Recipient authorizing the borrowing and the contemplated transactions and the execution and delivery of this Contract and the other Financing Documents.
 - (3) An opinion of Recipient's Counsel.
 - (4) Such other certificates, documents, opinions and information as OBDD may reasonably require.
- B. Conditions to Disbursements. As to any disbursement, OBDD has no obligation to disburse funds unless all following conditions are met:
- (1) There is no Default or Event of Default.
 - (2) The representations and warranties made in this Contract are true and correct on the date of disbursement as if made on such date.
 - (3) OBDD, in the reasonable exercise of its administrative discretion, has sufficient moneys in the Special Public Works Fund for use in the Project and has sufficient funding, appropriations, limitations, allotments and other expenditure authority to make the disbursement.
 - (4) OBDD (a) has received a completed Disbursement Request, (b) has received any written evidence of materials and labor furnished to or work performed upon the Project, itemized receipts or invoices for payment, and releases, satisfactions or other signed statements or forms as OBDD may require, (c) is satisfied that all items listed in the Disbursement Request are reasonable and that the costs for labor and materials were incurred and are properly included in the Costs of the Project, and (d) has determined that the disbursement is only for costs defined as eligible costs under the Act and any implementing administrative rules and policies.
 - (5) The Recipient has delivered documentation satisfactory to OBDD that, in addition to the Financing Proceeds, Recipient has available or has obtained binding commitments for all funds necessary to complete the Project.
 - (6) The Recipient has delivered to OBDD (in form and substance satisfactory to OBDD) an estimated schedule of Disbursement Requests, including anticipated number, submission dates and amounts.
 - (7) Any conditions to disbursement elsewhere in this Contract or in the other Financing Documents are met.

SECTION 6 - USE OF FINANCIAL ASSISTANCE

- A. Use of Proceeds. The Recipient shall use the Financing Proceeds only for the activities described in Exhibit C and according to the budget in Exhibit D. The Recipient may not transfer Financing Proceeds among line items in the budget without the prior written consent of OBDD.
- B. Costs of the Project. The Recipient shall apply the Financing Proceeds to the Costs of the Project in accordance with the Act and Oregon law, as applicable. Financing Proceeds cannot be used for costs in excess of one hundred percent (100%) of the total Costs of the Project and cannot be used for pre-Award Costs of the Project, unless permitted by Exhibit C.
- C. Costs Paid for by Others. The Recipient may not use any of the Financing Proceeds to cover costs to be paid for by other financing for the Project, whether from OBDD or from another State of Oregon agency or any third party.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT

The Recipient represents and warrants to OBDD:

- A. Estimated Project Cost, Funds for Repayment. A reasonable estimate of the Costs of the Project is shown in Section 1, and the Project is fully funded. The Recipient will have adequate funds available to repay the Loan, and the Maturity Date does not exceed the usable life of the Project.
- B. Organization and Authority.
 - (1) The Recipient is a Municipality under the Act, and validly organized and existing under the laws of the State of Oregon.
 - (2) The Recipient has all necessary right, power and authority under its organizational documents and under Oregon law to (a) execute and deliver this Contract and the other Financing Documents, (b) incur and perform its obligations under this Contract and the other Financing Documents, and (c) borrow and receive financing for the Project.
 - (3) This Contract and the other Financing Documents executed and delivered by Recipient have been authorized by an ordinance, order or resolution of Recipient's governing body, and voter approval, if necessary, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings.
 - (4) This Contract and the other Financing Documents have been duly executed by Recipient, and when executed by OBDD, are legal, valid and binding, and enforceable in accordance with their terms.
- C. Full Disclosure. The Recipient has disclosed in writing to OBDD all facts that materially adversely affect the Project, or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents. The Recipient has made no false statements of fact, nor has it omitted information necessary to prevent any statements from being misleading. The information contained in this Contract and the other Financing Documents is true and accurate in all respects.
- D. Pending Litigation. The Recipient has disclosed in writing to OBDD all proceedings pending (or to the knowledge of Recipient, threatened) against or affecting Recipient, in any court or before any governmental authority or arbitration board or tribunal, that, if adversely determined, would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.

E. No Defaults.

- (1) No Defaults or Events of Default exist or occur upon authorization, execution or delivery of this Contract or any of the Financing Documents.
- (2) The Recipient has not violated, and has not received notice of any claimed violation of, any agreement or instrument to which it is a party or by which the Project or its property may be bound, that would materially adversely affect the Project or the ability of Recipient to make all payments and perform all obligations required by this Contract and the other Financing Documents.

F. Compliance with Existing Agreements and Applicable Law. The authorization and execution of, and the performance of all obligations required by, this Contract and the other Financing Documents will not: (i) cause a breach of any agreement, indenture, mortgage, deed of trust, or other instrument, to which Recipient is a party or by which the Project or any of its property or assets may be bound; (ii) cause the creation or imposition of any third party lien, charge or encumbrance upon any property or asset of Recipient; (iii) violate any provision of the charter or other document pursuant to which Recipient was organized or established; or (iv) violate any laws, regulations, ordinances, resolutions, or court orders related to Recipient, the Project or its properties or operations.

G. Governmental Consent. The Recipient has obtained or will obtain all permits and approvals, and has made or will make all notifications, declarations, filings or registrations, required for the making and performance of its obligations under this Contract and the other Financing Documents, for the financing or refinancing and undertaking and completion of the Project.

SECTION 8 - COVENANTS OF RECIPIENT

The Recipient covenants as follows:

A. Notice of Adverse Change. The Recipient shall promptly notify OBDD of any adverse change in the activities, prospects or condition (financial or otherwise) of Recipient or the Project related to the ability of Recipient to make all payments and perform all obligations required by this Contract or the other Financing Documents.

B. Compliance with Laws. The Recipient shall comply with all applicable laws, rules, regulations and orders of any court or governmental authority that relate to this Contract or the other Financing Documents, that relate to the Project. In particular, but without limitation, Recipient shall comply with the following, as applicable:

- (1) State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
- (2) State labor standards and wage rates found in ORS chapter 279C.
- (3) OAR 123-042-0165 (5) requirements for signs and notifications.

These laws, rules, regulations and orders are incorporated by reference in this Contract to the extent required by law.

C. Project Completion Obligations. The Recipient shall:

- (1) When procuring professional consulting services, provide OBDD with copies of all solicitations at least 10 days before advertising, and all contracts at least 10 days before signing.
- (2) Provide OBDD with copies of all plans and specifications relating to the Project, and a timeline for the bidding/award process, at least ten (10) days before advertising for bids.

- (3) Provide a copy of the bid tabulation, notice of award, and contract to OBDD within ten (10) days after selecting a construction contractor.
 - (4) Permit OBDD to conduct inspection of the Project at any time.
 - (5) Complete the Project using its own fiscal resources or money from other sources to pay for any Costs of the Project in excess of the total amount of financial assistance provided pursuant to this Contract.
 - (6) Complete the Project no later than the Project Completion Deadline, unless otherwise permitted by the OBDD in writing.
 - (7) No later than the Project Closeout Deadline, provide OBDD with a final project completion report on a form provided by OBDD, including Recipient's certification that the Project is complete, all payments are made, and no further disbursements are needed; provided however, for the purposes of this Contract, OBDD will be the final judge of the Project's completion.
 - (8) Obtain and maintain as-built drawings for all facilities constructed as part of the Project.
- D. Ownership of Project. During the term of the Loan, the Project is and will continue to be owned by Recipient. The Project will be operated by Recipient or by a person under a management contract or operating agreement with Recipient.
- E. Operation and Maintenance of the Project. The Recipient shall operate and maintain the Project in good repair and operating condition so as to preserve the long term public benefits of the Project, including making all necessary and proper repairs, replacements, additions, and improvements during term of the Loan. On or before the Project Closeout Deadline, Recipient shall adopt a plan acceptable to OBDD for the on-going operation and maintenance of the Project without reliance on OBDD financing and furnish OBDD, at its request, with evidence of such adoption. The plan must include measures for generating revenues sufficient to assure the operation and maintenance of the Project during the usable life of the Project.
- F. Insurance, Damage. The Recipient shall maintain, or cause to be maintained, insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. Nothing in this provision precludes Recipient from exerting a defense against any party other than OBDD, including a defense of immunity. If the Project or any portion is destroyed, any insurance proceeds will be paid to OBDD and applied to prepay the outstanding balance on the Loan in accordance with Section 4.D.(1), unless OBDD agrees in writing that the insurance proceeds may be used to rebuild the Project.
- G. Sales, Leases and Encumbrances. Except as specifically described in Exhibit C, Recipient shall not sell, lease, exchange, abandon, transfer or otherwise dispose of any substantial portion of or interest in the Project or any system that provides revenues for payment or is security for the Loan, unless worn out, obsolete, or, in the reasonable business judgment of Recipient, no longer useful in the operation of the Project. Nevertheless, OBDD may consent to such disposition if it has received 90 days' prior written notice from Recipient. Such consent may require assumption by transferee of all of Recipient's obligations under the Financing Documents and payment of OBDD's costs related to such assumption. In the case of sale, exchange, transfer or other similar disposition, Recipient shall, within 30 days of receipt of any proceeds from such disposition, first, prepay the entire outstanding balance on the Loan in accordance with Section 4.D.(1), unless OBDD agrees otherwise in writing. If Recipient abandons the Project, Recipient shall prepay the entire outstanding balance of the Loan immediately upon demand by OBDD.

- H. Condemnation Proceeds. If the Project or any portion is condemned, any condemnation proceeds will be paid to OBDD and applied to prepay the outstanding balance of the Loan in accordance with Section 4.D.(1).
- I. Financial Records. The Recipient shall keep accurate books and records for the revenues and funds that are the source of repayment of the Loan, separate and distinct from its other books and records, and maintain them according to generally accepted accounting principles established by the Government Accounting Standards Board in effect at the time. The Recipient shall have these records audited annually by an independent certified public accountant, which may be part of the annual audit of all records of Recipient.
- J. Inspections; Information. The Recipient shall permit OBDD and any party designated by OBDD: (i) to inspect, at any reasonable time, the property, if any, constituting the Project; and (ii) at any reasonable time, to inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursements, contracts, investments and any other related matters, and financial statements or other documents related to its financial standing. The Recipient shall supply any related reports and information as OBDD may reasonably require. In addition, Recipient shall, upon request, provide OBDD with copies of loan documents or other financing documents and any official statements or other forms of offering prospectus relating to any other bonds, notes or other indebtedness of Recipient that are issued after the date of this Contract.
- K. Records Maintenance. The Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Contract, the Project or the Financing Proceeds for a minimum of six years, or such longer period as may be required by other provisions of this Contract or applicable law, following the Project Closeout Deadline. If there are unresolved issues at the end of such period, Recipient shall retain the books, documents, papers and records until the issues are resolved.
- L. Economic Benefit Data. The OBDD may require Recipient to submit specific data on the economic development benefits of the Project and other information to evaluate the success and economic impact of the Project, from the date of this Contract until six years after the Project Completion Date. The Recipient shall, at its own expense, prepare and submit the data within the time specified by OBDD.
- M. Disadvantaged Business Enterprises. ORS 200.090 requires all public agencies to “aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses...” OBDD encourages Recipient in any contracting activity to follow good faith efforts as described in ORS 200.045, available at https://www.oregonlegislature.gov/bills_laws/ors/ors200.html. Additional resources are provided by the Governor’s Policy Advisor for Economic and Business Equity. Also, the Certification Office for Business Inclusion and Diversity at the Oregon Business Development Department maintains a list of certified firms and can answer questions. Search for certified MWESB firms on the web at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.
- N. Professional Responsibility. A professional engineer or architect, as applicable, registered and in good standing in Oregon, will be responsible for the design and construction of the Project. All service providers retained for their professional expertise must be certified, licensed, or registered, as appropriate, in the State of Oregon for their specialty. The Recipient shall follow standard construction practices, such as bonding requirements for construction contractors, requiring errors and omissions insurance, and performing testing and inspections during construction.
- O. Notice of Default. The Recipient shall give OBDD prompt written notice of any Default as soon as Recipient becomes aware of its existence or reasonably believes a Default is likely.

- P. Indemnity. To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OBDD and its officers, employees and agents from and against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors; however, the provisions of this Section are not to be construed as a waiver of any defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the United States or other laws of the State of Oregon.
- Q. Further Assurances. The Recipient shall, at the request of OBDD, authorize, sign, acknowledge and deliver any further resolutions, conveyances, transfers, assurances, financing statements and other instruments and documents as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Contract and the other Financing Documents.

SECTION 9 - DEFAULTS

Any of the following constitutes an "Event of Default":

- A. The Recipient fails to make any Loan payment when due.
- B. The Recipient fails to make, or cause to be made, any required payments of principal, redemption premium, or interest on any bonds, notes or other material obligations, for any other loan made by the State of Oregon.
- C. Any false or misleading representation is made by or on behalf of Recipient in this Contract, in any other Financing Document or in any document provided by Recipient related to this Loan or the Project.
- D. (1) A petition, proceeding or case is filed by or against Recipient under any federal or state bankruptcy or insolvency law, and in the case of a petition filed against Recipient, Recipient acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal;
- (2) The Recipient files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, winding-up or composition or adjustment of debts;
- (3) The Recipient becomes insolvent or bankrupt or admits its inability to pay its debts as they become due, or makes an assignment for the benefit of its creditors;
- (4) The Recipient applies for or consents to the appointment of, or taking of possession by, a custodian (including, without limitation, a receiver, liquidator or trustee) of Recipient or any substantial portion of its property; or
- (5) The Recipient takes any action for the purpose of effecting any of the above.
- E. The Recipient defaults under any other Financing Document and fails to cure such default within the applicable grace period.
- F. The Recipient fails to perform any obligation required under this Contract, other than those referred to in Subsections A through E of this Section 9, and that failure continues for a period of 30 calendar days after written notice specifying such failure is given to Recipient by OBDD. The OBDD may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action.

SECTION 10 - REMEDIES

- A. Remedies. Upon any Event of Default, OBDD may pursue any or all remedies in this Contract or any other Financing Document, and any other remedies available at law or in equity to collect amounts due or to become due or to enforce the performance of any obligation of Recipient. Remedies may include, but are not limited to:
- (1) Terminating OBDD's commitment and obligation to make any further disbursements of Financing Proceeds under the Contract.
 - (2) Declaring all payments under the Contract and all other amounts due under any of the Financing Documents immediately due and payable, and upon notice to Recipient the same become due and payable without further notice or demand.
 - (3) Barring Recipient from applying for future awards.
 - (4) Withholding amounts otherwise due to Recipient for application to the payment of amounts due under this Contract, including as provided in ORS 285B.449.
 - (5) Foreclosing liens or security interests pursuant to this Contract or any other Financing Document.
- B. Application of Moneys. Any moneys collected by OBDD pursuant to Section 10.A will be applied first, to pay any attorneys' fees and other fees and expenses incurred by OBDD; then, to pay interest due on the Loan; then, to pay principal due on the Loan; and last, to pay any other amounts due and payable under this Contract or any of the Financing Documents.
- C. No Remedy Exclusive; Waiver; Notice. No remedy available to OBDD is intended to be exclusive, and every remedy will be in addition to every other remedy. No delay or omission to exercise any right or remedy will impair or is to be construed as a waiver of such right or remedy. No single or partial exercise of any right power or privilege under this Contract or any of the Financing Documents will preclude any other or further exercise thereof or the exercise of any other such right, power or privilege. The OBDD is not required to provide any notice in order to exercise any right or remedy, other than notice required in Section 9 of this Contract.
- D. Default by OBDD. In the event OBDD defaults on any obligation in this Contract, Recipient's remedy will be limited to injunction, special action, action for specific performance, or other available equitable remedy for performance of OBDD's obligations.

SECTION 11 - MISCELLANEOUS

- A. Time is of the Essence. The Recipient agrees that time is of the essence under this Contract and the other Financing Documents.
- B. Relationship of Parties; Successors and Assigns; No Third Party Beneficiaries.
- (1) The parties agree that their relationship is that of independent contracting parties and that Recipient is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.
 - (2) Nothing in this Contract gives, or is to be construed to give, directly or indirectly, to any third persons any rights and benefits greater than those enjoyed by the general public.
 - (3) This Contract will be binding upon and inure to the benefit of OBDD, Recipient, and their respective successors and permitted assigns.

- (4) The Recipient may not assign or transfer any of its rights or obligations or any interest in this Contract or any other Financing Document without the prior written consent of OBDD. The OBDD may grant, withhold or impose conditions on such consent in its sole discretion. In the event of an assignment, Recipient shall pay, or cause to be paid to OBDD, any fees or costs incurred because of such assignment, including but not limited to attorneys' fees of OBDD's Counsel. Any approved assignment is not to be construed as creating any obligation of OBDD beyond those in this Contract or other Financing Documents, nor does assignment relieve Recipient of any of its duties or obligations under this Contract or any other Financing Documents.
- (5) The Recipient hereby approves and consents to any assignment, sale or transfer of this Contract and the Financing Documents that OBDD deems to be necessary.

C. Disclaimer of Warranties; Limitation of Liability. The Recipient agrees that:

- (1) OBDD makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the Project or any portion of the Project, or any other warranty or representation.
- (2) The liability of the OBDD under this Contract is contingent upon the availability of moneys in the Special Public Work Fund for use in the project, and in no event are OBDD or its agents liable or responsible for any direct, indirect, incidental, special, consequential or punitive damages in connection with or arising out of this Contract or the existence, furnishing, functioning or use of the Project.

D. Notices. All notices to be given under this Contract or any other Financing Document must be in writing and addressed as shown below, or to other addresses that either party may hereafter indicate pursuant to this Section. Notices may only be delivered by personal delivery or mailed, postage prepaid. Any such notice is effective five calendar days after mailing, or upon actual delivery if personally delivered.

If to OBDD: Assistant Director, Economic Development
Oregon Business Development Department
775 Summer Street NE Suite 200
Salem OR 97301-1280

If to Recipient: City Manager
City of Brookings
898 Elk Drive
Brookings OR 97415-9648

- E. No Construction against Drafter. This Contract is to be construed as if the parties drafted it jointly.
- F. Severability. If any term or condition of this Contract is declared by a court of competent jurisdiction as illegal, invalid or unenforceable, that holding will not invalidate or otherwise affect any other provision.
- G. Amendments, Waivers. This Contract may not be amended without the prior written consent of OBDD (and when required, the Department of Justice) and Recipient. This Contract may not be amended in a manner that is not in compliance with the Act. No waiver or consent is effective unless in writing and executed by the party against whom such waiver or consent is sought to be enforced. Such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- H. Attorneys' Fees and Other Expenses. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the prevailing party in any dispute arising from this Contract is entitled to

recover its reasonable attorneys' fees and costs at trial and on appeal. Reasonable attorneys' fees cannot exceed the rate charged to OBDD by its attorneys. The Recipient shall, on demand, pay to OBDD reasonable expenses incurred by OBDD in the collection of Loan payments.

- I. Choice of Law; Designation of Forum; Federal Forum. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Contract, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

Any party bringing a legal action or proceeding against any other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

Notwithstanding the prior paragraph, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This paragraph applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This paragraph is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

- J. Integration. This Contract (including all exhibits, schedules or attachments) and the other Financing Documents constitute the entire agreement between the parties on the subject matter. There are no unspecified understandings, agreements or representations, oral or written, regarding this Contract.
- K. Execution in Counterparts. This Contract may be signed in several counterparts, each of which is an original and all of which constitute one and the same instrument.

The Recipient, by its signature below, acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.



STATE OF OREGON
acting by and through its
Oregon Infrastructure Finance Authority
of the Business Development Department



CITY OF BROOKINGS

By: _____
Chris Cummings, Assistant Director
Economic Development

By: _____
The Honorable Jake Pieper
Mayor of Brookings

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY IN ACCORDANCE WITH ORS 291.047:

Not Required per OAR 137-045-0030

EXHIBIT A - GENERAL DEFINITIONS

As used in this Contract, the following terms have the meanings below.

“Act” means ORS 285B.410 through 285B.482, as amended.

“Award” means the award of financial assistance to Recipient by OBDD dated 26 November 2018.

“Costs of the Project” means Recipient’s actual costs (including any financing costs properly allocable to the Project) that are (a) reasonable, necessary and directly related to the Project, (b) permitted by generally accepted accounting principles to be Costs of the Project, and (c) are eligible or permitted uses of the Financing Proceeds under applicable state or federal statute and rule.

“Counsel” means an attorney at law or firm of attorneys at law duly admitted to practice law before the highest court of any state, who may be of counsel to, or an employee of, OBDD or Recipient.

“Default” means an event which, with notice or lapse of time or both, would become an Event of Default.

“Financing Documents” means this Contract and all agreements, instruments, documents and certificates executed pursuant to or in connection with OBDD’s financing of the Project.

“Financing Proceeds” means the proceeds of the Loan.

“Lottery Bonds” means any bonds issued by the State of Oregon that are special obligations of the State of Oregon, payable from unobligated net lottery proceeds, the interest on which is exempt from federal income taxation, together with any refunding bonds, used to finance or refinance the Project through the initial funding or refinancing of all or a portion of the Loan.

“Municipality” means any entity described in ORS 285B.410(9).

“ORS” means the Oregon Revised Statutes.

“Project Completion Date” means the date on which Recipient completes the Project.

EXHIBIT B - SECURITY

A. Full Faith and Credit Pledge. The Recipient pledges its full faith and credit and taxing power within the limitations of Article XI, Sections 11 and 11 b, of the Oregon Constitution to pay the amounts due under this Contract. All amounts due under this Contract are payable from and secured by all lawfully available funds of Recipient.

B. Pledge of Net Revenues of Recipient’s Tourism Fund and Parks and Rec System Development Charge Fund.

1. All payment obligations under this Contract and the other Financing Documents are payable from the revenues of Recipient’s Tourism Fund and its Parks & Rec System Development Charge Fund after payment of operation and maintenance costs of the each fund respectively (“Net Revenues”). The Recipient irrevocably pledges and grants to OBDD a security interest in the Net Revenues to pay all of its obligations under this Contract and the other Financing Documents. The Net Revenues pledged pursuant to the preceding sentence and received by Recipient will immediately be subject to the lien of this pledge without physical delivery, filing or any other act, and the lien of this pledge is superior to and has priority over all other claims and liens, except as provided in Subsections 2 and 3 of this Section B, to the fullest extent permitted by ORS 287A.310. The Recipient represents and warrants that this pledge of Net Revenues complies with, and is valid and binding from the date of this Contract

as described in, ORS 287A.310. The lien of the pledge made under this Subsection 1 is hereinafter referred to as the “OBDD Lien”.

2. The Recipient shall not incur, without the prior written consent of OBDD, any obligation payable from or secured by a lien on and pledge of the Net Revenues that is on parity or superior to the OBDD Lien.

3. Notwithstanding the requirements of Subsection 2 of this Section B, loans previously made and loans made in the future by OBDD to Recipient that are secured by the Net Revenues may have a lien on such Net Revenues on parity with the OBDD Lien; provided that nothing in this paragraph will adversely affect the priority of any of OBDD’s liens on such Net Revenues in relation to the lien(s) of any third party(ies).

4. The Recipient shall charge rates and fees in connection with the operation of the SDC which, when combined with other gross revenues, are adequate to generate Net Revenues each fiscal year at least equal to one hundred twenty percent (120%) of the annual debt service due in the fiscal year on the Loan and any outstanding obligations payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien.

5. The Recipient may establish a debt service reserve fund to secure repayment of obligations that are payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien, provided that no deposit of the Net Revenues of the SDC into the debt service reserve fund is permitted until provision is made for the payment of all debt service on the Loan and any other obligations payable from or secured by a lien on and pledge of Net Revenues that is on parity with the OBDD Lien (including any obligations described in Subsection 3 above) for the 12-month period after such deposit.

EXHIBIT C - PROJECT DESCRIPTION

The Recipient will construct an approximately 3,500-square-foot permanent kit building, which will include retrofitting the existing heating / air conditioning, and extending the existing concrete slab.

Up to \$42,000 of pre-award expenses for the Building Purchase are allowed.

EXHIBIT D - PROJECT BUDGET

	OBDD Funds	Other / Matching Funds
Activity	Approved Budget	Approved Budget
Building Purchase “Pre-award”	\$42,000	\$0
Construction	23,000	12,000
Total	\$65,000	\$12,000

Report Criteria:

Report type: Summary

GL Period	Check Issue Date	Check Number	Vendor Number	Payee	Check GL Account	Amount
12/18	12/06/2018	82323	5871	BALCO Uniform Co Inc	10-00-2005	210.35
12/18	12/06/2018	82324	4939	BI- Mart Corporation	10-00-2005	34.24
12/18	12/06/2018	82325	313	Brookings Vol Firefighters	10-00-2005	2,250.00
12/18	12/06/2018	82326	715	Budge McHugh Supply	20-00-2005	1,004.63
12/18	12/06/2018	82327	5567	CAL/OR Insurance Specialists Inc	30-00-2005	683.33
12/18	12/06/2018	82328	3834	Clean Sweep Janitorial Service	25-00-2005	1,085.00
12/18	12/06/2018	82329	5827	Coastal Investments LLC	10-00-2005	1,130.00
12/18	12/06/2018	82330	1745	Coastal Paper & Supply, Inc	10-00-2005	1,602.91
12/18	12/06/2018	82331	5903	Carol Colee	33-00-2005	1,491.98
12/18	12/06/2018	82332	173	Curry Equipment	20-00-2005	289.85
12/18	12/06/2018	82333	166	Dan's Auto & Marine Electric	10-00-2005	331.96
12/18	12/06/2018	82334	317	DCBS - Fiscal Services	10-00-2005	789.90
12/18	12/06/2018	82335	1	Claudia Vella DeWitt	20-00-2005	31.75
12/18	12/06/2018	82336	3342	Fastenal	15-00-2005	359.75
12/18	12/06/2018	82337	5432	First Community Credit Union	25-00-2005	812.99
12/18	12/06/2018	82338	4646	Frontier	30-00-2005	1,359.98
12/18	12/06/2018	82339	5065	Gold Beach Lumber	25-00-2005	159.34
12/18	12/06/2018	82340	3632	Harbor View Windows, Heating & Air Inc	10-00-2005	1,393.00
12/18	12/06/2018	82341	199	Richard Harper	10-00-2005	400.00
12/18	12/06/2018	82342	162	Kerr Hardware	50-00-2005	1,383.33
12/18	12/06/2018	82343	328	Les Schwab Tire Center	10-00-2005	1,681.74
12/18	12/06/2018	82344	4269	Gary Milliman	10-00-2005	590.88
12/18	12/06/2018	82345	283	Muffler & More	25-00-2005	309.90
12/18	12/06/2018	82346	5886	Office Depot Inc	10-00-2005	18.89
12/18	12/06/2018	82347	3561	Oil Can Henry's	10-00-2005	109.99
12/18	12/06/2018	82348	279	One Call Concepts, Inc	20-00-2005	38.28
12/18	12/06/2018	82349	5008	Online Information Services	10-00-2005	131.26
12/18	12/06/2018	82350	5388	Palm Industries Inc	10-00-2005	392.50
12/18	12/06/2018	82351	4	Aaron Burns	10-00-2005	218.00
12/18	12/06/2018	82352	5905	Mitch Pofahl	10-00-2005	226.00
12/18	12/06/2018	82353	322	Postmaster	25-00-2005	850.00
12/18	12/06/2018	82354	207	Quill Corporation	10-00-2005	193.76
12/18	12/06/2018	82355	3	Kevin Adamek	20-00-2005	28.78
12/18	12/06/2018	82356	1840	Rogue Credit Union	15-00-2005	2,497.61
12/18	12/06/2018	82357	5856	Julian Savedra	10-00-2005	66.00
12/18	12/06/2018	82358	380	Stadelman Electric Inc	10-00-2005	72.00
12/18	12/06/2018	82359	5904	Travel Southern Oregon Coast	32-00-2005	500.00
12/18	12/06/2018	82360	4542	Umpqua Bank	10-00-2005	8,484.19
12/18	12/06/2018	82361	2863	Verizon Wireless	10-00-2005	497.44
12/18	12/13/2018	82362	5871	BALCO Uniform Co Inc	10-00-2005	494.77
12/18	12/13/2018	82363	4363	Black & Rice LLP	10-00-2005	1,924.25
12/18	12/13/2018	82364	5431	Brandt Media	10-00-2005	3,317.80
12/18	12/13/2018	82365	193	Central Equipment Co, Inc	50-00-2005	4,000.00
12/18	12/13/2018	82366	5858	CH2M Hill OMI	25-00-2005	107,604.13
12/18	12/13/2018	82367	3015	Charter Communications	30-00-2005	719.96
12/18	12/13/2018	82368	3834	Clean Sweep Janitorial Service	10-00-2005	900.00
12/18	12/13/2018	82369	822	Coast Auto Center	10-00-2005	46.00
12/18	12/13/2018	82370	183	Colvin Oil Company	10-00-2005	1,939.21
12/18	12/13/2018	82371	259	Da-Tone Rock Products	20-00-2005	992.36
12/18	12/13/2018	82372	371	DEQ Business Office	25-00-2005	160.00
12/18	12/13/2018	82373	3342	Fastenal	10-00-2005	340.35
12/18	12/13/2018	82374	4646	Frontier	30-00-2005	116.72
12/18	12/13/2018	82375	5078	Geotechnical Resources, Inc	58-00-2005	2,232.50

M = Manual Check, V = Void Check

GL Period	Check Issue Date	Check Number	Vendor Number	Payee	Check GL Account	Amount
12/18	12/13/2018	82376	3961	Grizzly Fence & Construction	55-00-2005	156.00
12/18	12/13/2018	82377	139	Harbor Logging Supply	10-00-2005	76.00
12/18	12/13/2018	82378	5906	Harbor Sanitary District	25-00-2005	.00 V
12/18	12/13/2018	82379	4269	Gary Milliman	10-00-2005	59.96
12/18	12/13/2018	82380	2	Western Collection Bureau Inc	10-00-2005	13.09
12/18	12/13/2018	82381	4487	Net Assets Corporation	10-00-2005	348.00
12/18	12/13/2018	82382	5897	Nevco Sports LLC	50-00-2005	848.86
12/18	12/13/2018	82383	3159	NorthCoast Health Screening	10-00-2005	45.00
12/18	12/13/2018	82384	4781	OHA Drinking Water Services	20-00-2005	140.00
12/18	12/13/2018	82385	4781	OHA Cashier	20-00-2005	305.00
12/18	12/13/2018	82386	4970	Outdoor Creations Inc	10-00-2005	725.00
12/18	12/13/2018	82387	252	Paramount Pest Control	10-00-2005	50.00
12/18	12/13/2018	82388	5768	Proficient Auto Center Inc	15-00-2005	171.82
12/18	12/13/2018	82389	861	Village Express Mail Center	10-00-2005	114.14
12/18	12/13/2018	82390	2122	Cardmember Service	10-00-2005	5,757.90
12/18	12/13/2018	82391	169	Waste Connections Inc	10-00-2005	908.40
12/18	12/13/2018	82392	151	Western Communications, Inc.	10-00-2005	145.63
12/18	12/13/2018	82393	4220	Woof's Dog Bakery	61-00-2005	20.00
12/18	12/20/2018	82394	5908	Amazon Capital Services	10-00-2005	125.18
12/18	12/20/2018	82395	4734	Aramark Uniform Services	10-00-2005	150.00
12/18	12/20/2018	82396	5767	Axon Enterprise Inc	10-00-2005	272.00
12/18	12/20/2018	82397	5144	Tim Brush	20-00-2005	120.00
12/18	12/20/2018	82398	5070	Canon Solutions America	10-00-2005	274.72
12/18	12/20/2018	82399	4928	CIS Trust	10-00-2005	19,526.43
12/18	12/20/2018	82400	5909	CMI Software Corp	30-00-2005	21,250.00
12/18	12/20/2018	82401	822	Coast Auto Center	20-00-2005	606.59
12/18	12/20/2018	82402	5902	Comfort Inn Columbia Gorge Gateway	20-00-2005	176.80
12/18	12/20/2018	82403	566	Curry County Assessor	10-00-2005	200.00
12/18	12/20/2018	82404	2384	Curry County Road Dept	15-00-2005	6,227.31
12/18	12/20/2018	82405	4746	Curry County Treasurer	10-00-2005	146.00
12/18	12/20/2018	82406	1	Ilona Gyurko	20-00-2005	13.98
12/18	12/20/2018	82407	1	Ted Heinse	20-00-2005	186.19
12/18	12/20/2018	82408	1	Duane M Olson	20-00-2005	12.52
12/18	12/20/2018	82409	1	Charles Page	20-00-2005	164.01
12/18	12/20/2018	82410	1	Jack & Betty St Martin	20-00-2005	31.12
12/18	12/20/2018	82411	5344	Dooley Enterprises, Inc	10-00-2005	330.02
12/18	12/20/2018	82412	5073	Edwards Roofing	10-00-2005	85.00
12/18	12/20/2018	82413	5907	Tyson Essenmacher	33-00-2005	233.20
12/18	12/20/2018	82414	3342	Fastenal	15-00-2005	130.31
12/18	12/20/2018	82415	4646	Frontier	25-00-2005	1,020.80
12/18	12/20/2018	82416	3961	Grizzly Fence & Construction	10-00-2005	2,350.00
12/18	12/20/2018	82417	4980	iSecure	10-00-2005	33.00
12/18	12/20/2018	82418	5354	New Creation Builders	58-00-2005	10,980.48
12/18	12/20/2018	82419	329	New Hope Plumbing	10-00-2005	4,418.00
12/18	12/20/2018	82420	5886	Office Depot Inc	10-00-2005	196.78
12/18	12/20/2018	82421	4781	OHA Cashier	20-00-2005	200.00
12/18	12/20/2018	82422	5603	Oregon Assoc of Municipal Recorders	10-00-2005	60.00
12/18	12/20/2018	82423	5155	Oregon Department of Revenue	10-00-2005	297.00
12/18	12/20/2018	82424	5155	Oregon Department of Revenue	10-00-2005	425.00
12/18	12/20/2018	82425	207	Quill Corporation	10-00-2005	107.46
12/18	12/20/2018	82426	3	Banana Belt Property Mngmnt	20-00-2005	21.27
12/18	12/20/2018	82427	3093	Shelton Turnbull Printers Inc	10-00-2005	198.05
12/18	12/20/2018	82428	5730	Spectrum Reach	32-00-2005	500.00
12/18	12/20/2018	82429	5168	Sporthaven, Inc	50-00-2005	1,200.00
12/18	12/20/2018	82430	612	Strahm's Sealcoat & Striping, INC	15-00-2005	773.00
12/18	12/20/2018	82431	142	Tidewater Contractors Inc	15-00-2005	322.79

M = Manual Check, V = Void Check

GL Period	Check Issue Date	Check Number	Vendor Number	Payee	Check GL Account	Amount
12/18	12/20/2018	82432	5900	Wells Fargo Equipment Finance	25-00-2005	1,291.67
12/18	12/28/2018	82433	5893	Austin Electric LLC	10-00-2005	802.50
12/18	12/28/2018	82434	5567	CAL/OR Insurance Specialists Inc	25-00-2005	4,257.00
12/18	12/28/2018	82435	183	Colvin Oil Company	10-00-2005	2,144.28
12/18	12/28/2018	82436	1357	Curry County Clerk	10-00-2005	450.00
12/18	12/28/2018	82437	1	Erik & Shalene Holland	20-00-2005	200.00
12/18	12/28/2018	82438	2640	Dyer Partnership Inc., The	52-00-2005	572.50
12/18	12/28/2018	82439	5847	MPress LLC	10-00-2005	30.00
12/18	12/28/2018	82440	5584	Northwoods Overhead Door	10-00-2005	4,868.00
12/18	12/28/2018	82441	5886	Office Depot Inc	10-00-2005	139.63
12/18	12/28/2018	82442	322	Postmaster	10-00-2005	225.00
12/18	12/28/2018	82443	207	Quill Corporation	10-00-2005	11.99
12/18	12/28/2018	82444	444	Secretary of State	10-00-2005	300.00
12/18	12/28/2018	82445	444	Secretary of State	75-00-2005	150.00
12/18	12/28/2018	82446	142	Tidewater Contractors Inc	15-00-2005	218,864.09
12/18	12/28/2018	82447	273	Traffic Safety Supply Co, Inc	15-00-2005	1,040.19
Grand Totals:						<u>477,096.22</u>

Dated: _____

Mayor: _____

City Council: _____

City Recorder: _____

Report Criteria:

Report type: Summary



City of Brookings

898 Elk Drive, Brookings, OR 97415

(541) 469-1102 Fax (541) 469-3650

rritz@brookings.or.us

Committee Vacancies

Date: January 14, 2019

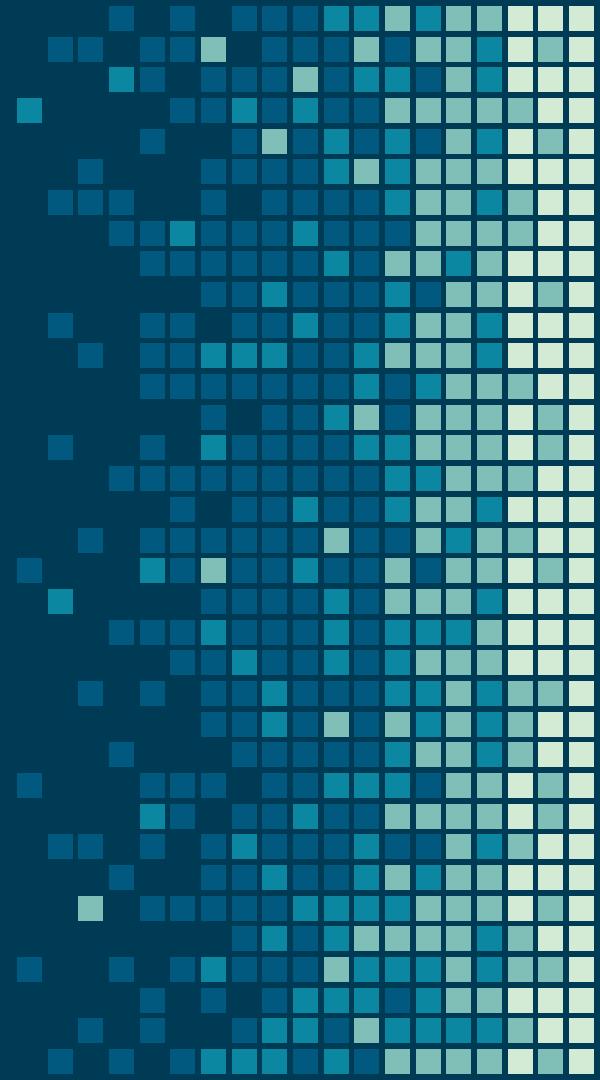
Re: Vacant Volunteer Positions

Following is a list of all Commission/Committee positions and terms currently vacant:

Position	Held By	Month/ Day	Year Expires	Term/ Years
Budget #1	VACANT	2/1	2021	3
Budget #2	VACANT	2/1	2019	3
Budget #3	VACANT	2/1	2019	3
Parks & Rec #2	VACANT	2/1	2019	2
TPAC #4	VACANT	7/1	2019	3
Planning Commission #3	VACANT	4/1	2020	4

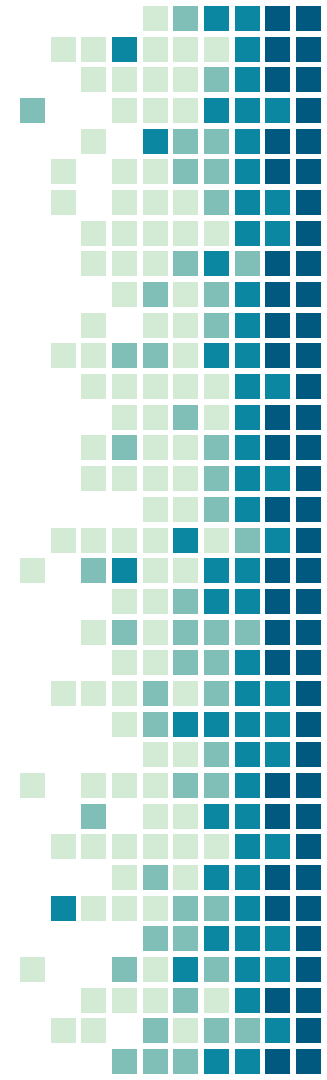
A Discussion on The Homeless Situation

Brig Schofield and Nathaniel Barnard



Who We Are (and what we're not)

- ❖ We are high school students from our American government class
- ❖ We are not here to protect, or advocate, for the Homeless.
- ❖ We are here for the City of Brookings, and to contribute to the search for a solution.
- ❖ We highly encourage any questions throughout this presentation to be asked of us.



Martin V. Boise

- ❖ Martin V. Boise is the case providing the U.S. with its legal guidelines regarding Homeless Residency.
- ❖ Homeless Shelters in Boise were found full, yet all sleeping in public was made criminal.
- ❖ To comply with *Martin v. Boise*: There MUST be a space which is legal to reside, if we wish to make other space illegal to reside.



What Does Martin Really Say?

- ❖ “Prohibiting sleeping outside against homeless individuals with no access to alternative shelter” violates the 8th amendment
- ❖ “We in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place.”

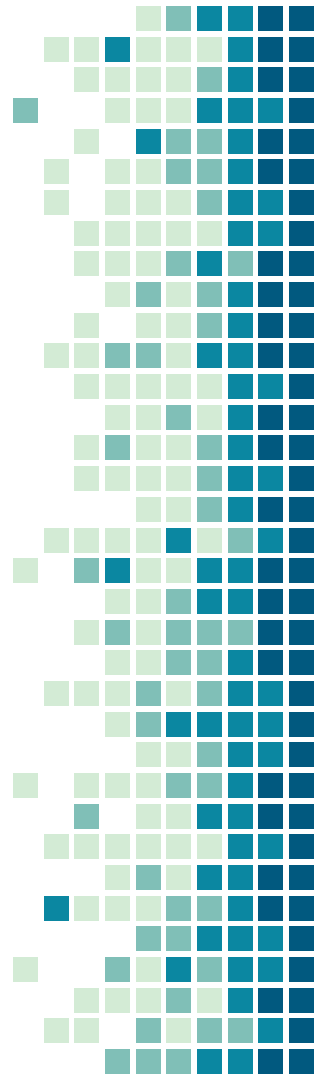
The Current Situation

- ❖ The Library has banned camping on their premises
- ❖ The Port has wrote an ordinance regarding the Martin
Decision
- ❖ The city has not made any policy changes and is acting on a
non-enforcement basis regarding pre-existing laws



What's Wrong With the Status Quo?

- ❖ The city ordinances are in violation of the Constitution
- ❖ The city has far less control over the homeless location
- ❖ There is ambiguity for the parties involved
- ❖ The city could mandate homeless sleeping better if a location was written into law



AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE PORT OF BROOKINGS HARBOR
REGULATING SLEEPING AND CAMPING ON PORT PROPERTY

WHEREAS, on May 26, 1998, the Board of Commissioners of the Port of Brookings Harbor adopted Ordinance No. 1-1998; and

WHEREAS, on September 4, 2018, the Ninth Circuit Court of Appeals issued a decision in the case *Martin v. City of Boise*, which held that government cannot criminalize sleeping on public property by homeless persons if there are not adequate shelters available without violating the Eighth Amendment to the United States Constitution; and

WHEREAS, the Court also indicated that some regulations regarding homeless persons sleeping on public property would likely be permissible if the regulations restricted the time, place, and manner of said sleeping activity rather than an absolute ban all sleeping on public property; and

WHEREAS, there have been incidents of homeless persons erecting tents on Port property all hours of the day and night necessitating the need for more specific regulations by the Commission.

Now, therefore, the Board of Commissioners of the Port of Brookings Harbor ordains as follows:

Section 1. Ordinance Identified. This ordinance amends Ordinance No. 1-1998 adopted May 26, 1998.

Section 2. Amendment. Part IV, Specific Rules and Regulations, of Ordinance No. 1-1998 is hereby amended by adding Section 4.44 to read as follows:

4.44 Sleeping and camping on Port-owned property.

4.44.1 Policy. It is the policy of the Board of Commissioners to implement regulations for Port-owned property that adhere to the Ninth Circuit Court of Appeal's ruling in *Martin v. Boise* while at the same time ensuring that the general public and Port visitors are allowed to continue to enjoy the services and amenities of the Port.

4.44.2 Camping -- Defined. "Camping" is defined for purposes of this ordinance as the erection of any tent or similar temporary structure for use as a means of shelter.

4.44.3 Camping - Prohibited. Camping is prohibited on all Port-owned properties except in areas designated as a campground.

4.44.4 Camping -- Exception. Persons who are homeless shall not be issued a criminal citation for violating section 4.44.3, including a citation for criminal trespass, if: (1) said person is camping on Port-owned property between the hours of 10 p.m. and 6:00 a.m.; and (2) said person is sleeping or lying down for purposes of rest; and (3) there are no local overnight shelter beds available. In addition, said camping activities may not obstruct any pedestrian or vehicular pathway, including the boardwalk and entrances and exits to buildings, nor cause damage to any Port property. If said person does obstruct pedestrian or vehicular pathways, including the boardwalk or entrances or exits to buildings, or cause damage to any Port property, then he or she may be issued a

Cohesion

- ❖ Port
- ❖ City
- ❖ County
- ❖ State

