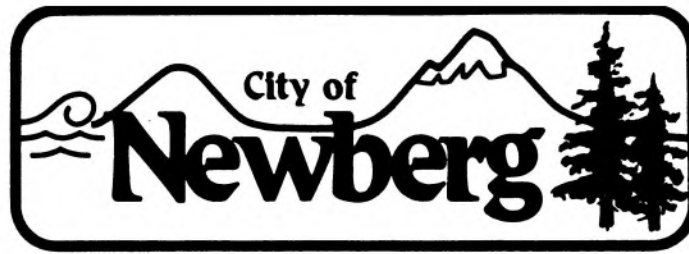


City Manager
(503) 537-1207

City Attorney
(503) 537-1206



414 East First St.
PO Box 970
Newberg, OR 97132

**CITY OF NEWBERG
CITY COUNCIL WORK SESSION
FEBRUARY 7, 2011
6:00 P.M.
NEWBERG PUBLIC SAFETY BUILDING
401 EAST THIRD STREET**

THE CITY COUNCIL OF THE CITY OF NEWBERG WILL HOLD A WORK SESSION TO REVIEW THE COUNCIL AGENDA ITEMS. NO ACTION WILL BE TAKEN ON THE AGENDA ITEMS AND NO DECISIONS WILL BE MADE. THE COUNCIL MAY HEAR REPORTS FROM BOARDS, COMMISSIONS, AND COMMITTEES. THE BELOW WILL BE HEARD:

- PRESENTATION FROM FIRE CHIEF LES HALLMAN AND FIRE DIVISION CHIEF FRANK DOUGLAS ON A POSSIBLE AMBULANCE SERVE RATE INCREASE.

DANIEL DANICIC
CITY MANAGER

ACCOMMODATION OF PHYSICAL IMPAIRMENTS:

In order to accommodate persons with physical impairments, please notify the City Recorder's Office of any special physical accommodations you may need as far in advance of the meeting soon as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact the city recorder, at (503) 537-1283. For TTY service please call (503) 554-7793.

● City Manager's Office: e-mail: dan.danicic@newbergoregon.gov Fax: 537-5013 ●
Admin: 537-1261 ● Building: 537-1240 ● Public Works: 537-1273 ● Finance: 538-9421 ● Fire: 537-1230
Library: 538-7323 ● Municipal Court: 537-1203 ● Police: 538-8321 ● Maintenance: 537-1234 ● Utilities: 537-1205
Municipal Court Fax: 538-5393 ● Public Works Fax: 537-1277 ● Library Fax: 538-9720

"Working Together For A Better Community-Serious About Service"

Memo

To: Newberg City Council
From: Fire Division Chief Frank Douglas
CC: City Manager Dan Danicic and Fire Chief Les Hallman
Date: January 27, 2011
Re: Ambulance Rate Increase Request

Below is draft material for discussion at the February 7, 2011, City Council work session. This is for a request scheduled to go before the Council at their February 22, 2011, business meeting regarding a request for an ambulance rate increase.

If you authorize a rate increase on February 22, 2011, the increase in ambulance rates would be as follows:

1. Effective January 1, 2011, EMS/ambulance rates shall be as follows:

Basic Life Support (BLS) Base Rate	\$1,200.00
Advanced Life Support (ALS) Base Rate	\$1,200.00
Hospital to Hospital Transfer (ALS & BLS)	\$1,200.00
Aid Call	\$360.00
Sit-Up Charge	\$240.00
Waiting Time	\$72.00/1/2 hour
Extra Technician	\$252.00
Mileage Rate	\$16.50 / loaded mile

2. Effective January 1, 2012, EMS/ambulance rates shall be as follows:

Basic Life Support (BLS) Base Rate	\$1,440.00
Advanced Life Support (ALS) Base Rate	\$1,440.00
Hospital to Hospital Transfer (ALS & BLS)	\$1,440.00
Aid Call	\$432.00
Sit-Up Charge	\$288.00
Waiting Time	\$86.40/1/2 hour
Extra Technician	\$302.40
Mileage Rate	\$19.80 / loaded mile

EXECUTIVE SUMMARY:

Newberg Fire Department operates a fire-based EMS system which utilizes cross-trained, dual role, firefighter/paramedics offering a high level of protection and services to our citizens. Fire based ambulance service is the most popular model for ambulance service in the USA, due to its ability to provide high service levels. Since 1994, the Fire Department has been operating the emergency medical service/ambulance division with the dual role firefighter/paramedics.

The last ambulance rate increase was in September 2007. Since 2007 there have been no ambulance rate increases to reflect rising costs due to inflation, or to account for severe decreases in reimbursements made by the federal government for Medicare patients.

The fire department relies heavily on ambulance transport fees to support both EMS and fire protection services. Without the EMS budget it is highly unlikely the City of Newberg could keep two fire stations open.

The fire department may have to take emergency units off the street in 2010-2011 to meet budget. This potential reduction in emergency services is called a "brown out."

The EMS contingency fund has waxed and waned over the past six (6) years. The contingency has had a low of \$42,249.00 and a high of \$162,453.00. The 2007 rate increase helped. This year our EMS contingency is \$112,484. We may have to use a substantial portion of the contingency fund this year to maintain services. This scenario is not sustainable. The EMS budget has little reserve for unexpected large emergencies.

The EMS budget is unable to set aside adequate funds for the replacement of ambulances. For example, EMS should be replacing an ambulance every 3-4 years. This requires setting aside \$45,000 to \$60,000 per year for ambulance replacement. In the 2010-11 budget EMS is only able to set aside \$18,000 which mean EMS is not contributing enough into Fund 33 (Fire & EMS Equipment Fee) which is used to replace fire apparatus and EMS units. It was only with a \$110,000.00 donation in 2009 from the Newberg Charitable Organization (NCO) that we were able to replace an old front-line ambulance with high mileage. We need to be able to build on our contingency fund and set money aside for replacement ambulances.

It is estimated that our EMS fund has lost between 1 and 2 million dollars since the Medicare Fee Schedule began in 2002. The following is an example of what we were reimbursed prior to implementation of the Medicare Fee Schedule and what we are currently reimbursed by Medicare.

Newberg Fire Department offers a FireMed program (\$45.00 per year per family) to protect families from the high cost of ambulance service.

Without the Medicare Fee Schedule (pre-April 2002)

Ambulance Bill: \$1,000

Medicare allowable: \$580.96

Total collected from Medicare (80% of \$580.96) or \$464.77

Total collected from the patient (out of pocket and/or 2nd insurance): \$419.04

Total collected \$1,000.00

With the Medicare Fee Schedule

Ambulance Bill: \$1,000.00

Medicare allowable: \$396.06

Total collected from Medicare: \$316.85 (80% of allowable)

Total collected from the patient (out of pocket): \$79.21 (20% of allowable)

Total written off as non-collectable per Medicare rules: \$603.94

Total collected: \$396.06

Difference collected between pre-Medicare Fee Schedule and current Medicare Fee Schedule is **\$603.94** per transport for our most common transport (ALS-1 Emergency).

Medicare patients represent approximately 55% of our total ambulance transports. In 2010 we estimate we will have 2200 transports.

Increasing ambulance rates:

- Help NFD continue providing high levels of EMS care;
- Reduce total number of brown outs;
- Will help us replace old ambulances;
- Recover some funds lost due to Medicare Fee Schedule;
- Help NFD keep up with inflation, rising costs of medical supplies, and labor costs;
- Will continue to limit the use of tax dollars to support ambulance services;
- Will reduce the amount of property tax needed to staff fire stations because ambulance staff are cross-trained as firefighters.

New rates versus current rates are as follows:

Effective January, 2011:

<u>Service</u>	CURRENT	PROPOSED
Basic Life Support Base Rate	\$1,000.00	\$1,200.00
Advanced Life Support (ALS) Base Rate	\$1,000.00	\$1,200.00
Hospital to Hospital Transfer (ALS & BLS)	\$1,000.00	\$1,200.00
Aid Call	\$300.00	\$360.00
Sit-Up Charge	\$200.00	\$240.00
Waiting Time	\$60.00	\$72.00/1/2 hour
Extra Technician	\$210.00	\$252.00
Mileage Rate	\$13.75	\$16.50/loaded mile

Effective January, 2012:

Basic Life Support (BLS) Base Rate	\$1,200.00	\$1,440.00
Advanced Life Support (ALS) Base Rate	\$1,200.00	\$1,440.00
Hospital to Hospital Transfer (ALS & BLS)	\$1,200.00	\$1,440.00
Aid Call	\$360.00	\$432.00
Sit-Up Charge	\$240.00	\$288.00
Waiting Time	\$72.00/1/2 hour	\$86.40/1/2 hour
Extra Technician	\$252.00	\$302.40
Mileage Rate	\$16.50/loaded mile	\$19.80 / loaded mile

Ambulance Rate Survey – How we compare

Below are the current rates for some other agencies in Oregon including all other Yamhill County ambulance service providers. A full survey is available upon request.

- Albany Fire Department: \$1,020.00 ALS / \$1,020.00 BLS / \$20.00 per loaded mile
- American Medical Response: \$1165.96 ALS / \$737.84 BLS / 15.72 per loaded mile
- Eugene Fire and EMS: \$1,600.00 ALS / \$1,600.00 BLS / \$20.00 per loaded mile
- Lane Rural Fire/Rescue: \$1,600.00 ALS / \$1,600.00 BLS / \$20.00 per loaded mile

- *McMinnville Fire Depart (MFD): \$984.00 ALS / \$843.00 BLS / \$17.00 per loaded mile
- **Metro West Ambulance: \$664.92 ALS / \$465.82 BLS / \$11.07 per loaded mile
- Sheridan Fire District: \$1,150.00 ALS / \$1,000.00 BLS / \$15.00 per loaded mile
- Springfield Fire and Rescue: \$1,600.00 ALS / \$1,600.00 BLS / \$20.00 per loaded mile
- Tillamook Ambulance: \$1,571.50 ALS / \$1,445.00 BLS / \$31.00 per loaded mile
- West Valley Fire Dist. (**Willamina**): \$1,200.00 ALS / \$800.00 BLS / \$12.00 per loaded mile

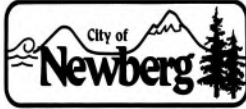
*MFD rate for non-residents is \$1,077.00 ALS / \$911.00 BLS

** Rates lower due to volume - less personal costs. If Metro West served Newberg at our call volume and our level of service, their rates would likely be much higher.

FISCAL IMPACT: Staff estimates an increase of an additional \$150,000.00 per year in revenue in each of the next two fiscal years. This will put the EMS fund in a better cash position to maintain services. It is expected the fire department may have to take emergency EMS units off the street periodically in 2011 and 2012 due to budget shortfall (brown outs). Additional revenue will reduce the number of brown outs.

STRATEGIC ASSESSMENT: The rate increase helps to maintain revenue levels necessary to maintain staffed ALS units and funds to replace old ambulances. A rate increase reduces the financial impact created by the Medicare Fee Schedule, rising medical equipment costs, and rising labor costs.

****DRAFT****



RESOLUTION No. 2011-2931

A RESOLUTION ADOPTING EMERGENCY MEDICAL SERVICE RATE INCREASES EFFECTIVE JANUARY 1, 2011

RECITALS:

1. The City of Newberg Fire Department has been operating the emergency medical services/ambulance since 1994.
2. There has been no rate increase since September 2007. Staff has attempted to maintain rates the same for the last three (3) years. This has required using contingency funds and a reliance on donations to purchase a new ambulance.
3. The City of Newberg Fire Department offers a FireMed program (\$45 per year per family) to protect families from the high cost of ambulance service. FireMed guarantees no out-of-pocket expenses for doctor ordered or medically necessary ambulance transports. Since Newberg FireMed started in 1994, we have never denied a claim.
4. Increased ambulance rates are necessary to stay current with inflation, and to make up for revenue lost due to cuts mandated by the Federal Medicare Fee Schedule. Medicare Fee Schedule was phased in over a number of years beginning April 1, 2002. Virtually all urban jurisdictions in the nation are experiencing the same problem with Medicare.
5. The ambulance rate increase proposed will not replace the revenue lost from implementation of the Medicare Fee Schedule, but may lessen the overall financial impact on the Emergency Medical Services (EMS) budget.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Effective January 1, 2011, EMS/ambulance rates shall be as follows:

Basic Life Support (BLS) Base Rate	\$1,200.00
Advanced Life Support (ALS) Base Rate	\$1,200.00
Hospital to Hospital Transfer (ALS & BLS)	\$1,200.00
Aid Call	\$360.00
Sit-Up Charge	\$240.00
Waiting Time	\$72.00/1/2 hour
Extra Technician	\$252.00
Mileage Rate	\$16.50 / loaded mile

2. Effective January 1, 2012, EMS/ambulance rates shall be as follows:

Basic Life Support (BLS) Base Rate	\$1,440.00
Advanced Life Support (ALS) Base Rate	\$1,440.00
Hospital to Hospital Transfer (ALS & BLS)	\$1,440.00
Aid Call	\$432.00
Sit-Up Charge	\$288.00
Waiting Time	\$86.40/1/2 hour
Extra Technician	\$302.40
Mileage Rate	\$19.80 / loaded mile

3. The finance director shall review the status of the EMS fund on an annual basis. Following implementation of the above increases, if necessary, the finance director may recommend for Council consideration of an ambulance rate increase by at least the rate of inflation for the previous year.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: _____, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this ____ day of _____, 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this _____ day of _____, 2011.

Bob Andrews, Mayor

Council accepts comments on agenda items during the meeting. Fill out a form identifying the item you wish to speak on prior to the agenda item beginning and turn it into the City Recorder. (The exception is land use hearings, which requires a specific public hearing process.)

**CITY OF NEWBERG
CITY COUNCIL AGENDA
FEBRUARY 7, 2011
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET**

I. CALL MEETING TO ORDER*

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. CITY MANAGER'S REPORT

V. PUBLIC COMMENTS

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

VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2011-2926** accepting an Interim Financing Loan from the Clean Water State Revolving Fund by entering into an agreement with the State of Oregon acting by and through the Department of Environmental Quality. (Pgs. 3-5)
2. Consider a motion approving **Resolution No. 2011-2929** adopting the implementation of GASB 54 by committing the ending fund balances of Economic Development Revolving Loan Fund and Cable TV for specific purposes and delegating authority to the finance director for "assign" ending fund balances. (Pgs. 7-9)
3. Consider a motion approving a proclamation recognizing Coach Chris Casey for his and the Aloha High School football teams accomplishment in winning the Metro League Championship for 2010. (Pgs. 11-12)
4. Consider a motion approving City Council Minutes for January 3, 2011. (Pgs. 13-18)

VII. PUBLIC HEARINGS

1. Consider a motion approving **Order No. 2011-0030** amending the Comprehensive Plan map designation from Low Density Residential (LDR) to High Density Residential (HDR) and amend the Zoning designation from R-1 (Low Density Residential) to R-3 (High Density Residential) for a property located at 1103 North Meridian Street.
(Record Closed, Council Deliberation Only)
(Quasi-Judicial Hearing)
2. Consider a motion approving **Ordinance No. 2011-2733** adopting the reformatted, indexed, and republished Newberg Municipal Code. (Pgs. 19-69)
(Legislative Hearing)

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

VIII. NEW BUSINESS

Consider a motion approving **Resolution No. 2011-2928** authorizing the city manager to amend the animal shelter design contract with LCG Pence Construction, increasing the contract by \$8,000.00 to conduct a value engineering effort. (Pgs. 71-76)

IX. COUNCIL BUSINESS

X. ADJOURNMENT

INDEX OF ORDERS, ORDINANCES, AND/OR RESOLUTIONS:

ORDER(S):

Order No. 2011-0030 amending the Comprehensive Plan map designation from Low Density Residential (LDR) to High Density Residential (HDR) and amending the Zoning designation from R-1 (Low Density Residential) to R-3 (High Density Residential) for a property located at 1103 N. Meridian Street, Tax Lot 3218DA-2100.

ORDINANCE(S):

Ordinance No. 2011-2733 adopting the reformatted, indexed, and republished Newberg Municipal Code and declaring an emergency.

RESOLUTION(S):

Resolution No. 2011-2926 accepting an Interim Financing Loan from the Clean Water State Revolving Fund by entering into an agreement with the State of Oregon acting by and through the Department of Environmental Quality.

Resolution No. 2011-2928 authorizing the city manager to amend the current Newberg Animal Shelter design contract with LCG Pence Construction, LLC in the amount of \$8,000.00 to conduct an intense value engineering effort on the design during their completion of the final design and bid package and obtain a new guaranteed maximum price.

Resolution No. 2011-2929 adopting the implementation of GASB 54 by committing the ending fund balances of Economic Development Revolving Loan Fund and Cable TV for specific purposes and delegating authority to the finance director for “assign” ending fund balances.

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Manager's office of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact Norma Alley, City Recorder, at (503) 537-1283.

Public testimony will be heard on agenda items at the Council meeting. The City Council asks written testimony be submitted to the City Recorder before 5:00 p.m. on the preceding Thursday. Written testimony submitted after that will be brought before the Council on the night of the meeting for consideration and a vote to accept or not accept it into the record.

City of Newberg Mission Statement:

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

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

DATE ACTION REQUESTED: February 7, 2011

Order ____ **Ordinance** ____ **Resolution** XX **Motion** ____ **Information** ____
No. **No.** **No. 2011-2926**

SUBJECT: Accept an Interim Financing Loan from the Clean Water State Revolving Fund by entering into an agreement with the State of Oregon acting by and through the Department of Environmental Quality, in the amount of \$11,409,645

Contact Person (Preparer) for this Resolution: Rob Charles, PW Director

Dept.: Public Works - Engineering

File No.:
(if applicable)

RECOMMENDATION: Adopt **Resolution No. 2011-2926.**

EXECUTIVE SUMMARY:

The City of Newberg’s 2007 Wastewater Treatment Plant (WWTP) Facilities Plan Update (FPU), completed by Brown and Caldwell Consulting Engineers, evaluated the condition of the processes and equipment at the WWTP. The report also identified existing deficiencies and predicted expansion elements to meet future demands. The estimated cost of Phase 1 & 2 construction is \$47,600,000 with an additional \$9,200,000 for Engineering Design and Project Administration. City staff has therefore developed the WWTP Repair, Renovation, and Expansion (RRE) Project to address these deficiencies. A detailed priority list of the individual projects is attached as Exhibit “A”, which is hereby attached and by this reference incorporated.

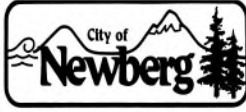
In order to fund the completion of this project, the City applied for a loan through the Clean Water State Revolving Fund (CWSRF). They approved our application and have agreed to loan us \$11,409,645 to fund the first phase of the project. The City will continue to apply for additional loans each year until the project is complete. Staff anticipates the overall project to take about seven years to complete.

The Loan Agreement is attached as Exhibit “B”. Exhibit “B” is hereby attached and by this reference incorporated. The loan is a “Revenue Secured Loan” made by the Department of Environmental Quality (DEQ) pursuant to OAR Section 340-054-0065(2) for the purpose of financing the project.

We request City Council to authorize the City Manager to sign the agreement with the State of Oregon in the amount of \$11,409,645.

FISCAL IMPACT: The estimated annual debt payment is approximately \$825,000, which will be paid by rate payers (15%) and systems development charges (85%) over the next 20 years. This anticipated debt obligation was included in the 2010-2014 utility rate study as well as in a special review in September 2010. During those reviews, the Citizens’ Rate Review Committee assumed a 5% interest rate on the debt. That is supported by the current rate structure. The actual interest rate will be between 2.88% and 3.38%

STRATEGIC ASSESSMENT: This project will ensure that Newberg is prepared to meet Department of Environmental Quality (DEQ) regulatory requirements for the WWTP through the 2030 population projection. The debt obligation will be paid over the next 20 years.



RESOLUTION No. 2011-2926

**A RESOLUTION ACCEPTING AN INTERIM FINANCING LOAN FROM
THE CLEAN WATER STATE REVOLVING FUND BY ENTERING INTO
AN AGREEMENT WITH THE STATE OF OREGON ACTING BY AND
THROUGH THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

RECITALS:

1. The City of Newberg is a ‘municipality’ (“City”) within the meaning of Oregon Revised Statutes 285B.410(4).
2. The City has filed an application with the State of Oregon through the Department of Environmental Quality to obtain financial assistance from the Clean Water State Revolving Fund (CWSRF) to complete portions of the Wastewater Treatment Plant Repair, Renovation and Expansion (WWTP RRE) Project as defined by the 2007 Newberg Wastewater Treatment Facilities Plan Update. A detailed list of the individual projects is attached as Exhibit “A”, which is hereby attached and by this reference incorporated.
3. The Department has approved the City’s application for financial assistance.
4. The City is required to sign the Loan Agreement as shown in Exhibit “B”, which is hereby attached and by this reference incorporated.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Interim Financing Loan Authorized. The City Council, as governing body, authorizes the City Manager to execute the Interim Financing Loan Agreement required to obtain CWSRF financial assistance. The loan shall not be in excess of \$11,409,645 at the interest rate of 2.88% to 3.38%. The proceeds of the CWSRF loan shall be applied solely to the costs of the WWTP RRE Project as defined in the Loan Agreement attached as Exhibit “B” and by this reference adopted.
2. Security. Amounts payable by the City shall be payable from the sources described in Article 1 (J) of the Loan Agreement which states “The Borrower represents and warrants that the pledge of Net Operating Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310.”
3. Additional Documents. The City Manager is hereby authorized to enter into any agreements and to execute any documents or certificates, which may be required to obtain financial assistance from CWSRF for the WWTP RRE Project pursuant to the Loan Agreement.

4. Tax-Exempt Status. The City covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the City pursuant to the Interim Financing Loan Agreement not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The City Manager of the City may enter into covenants on behalf of the City to protect the tax-exempt status of the interest paid by the City pursuant to the Interim Financing Loan Agreement and may execute any Tax Certificate, Internal Revenue Service forms or other documents as shall be required by the Department or their bond counsel to protect the tax-exempt status of such interest.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 8, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 7th day of February 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 10th day of February 2011.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through Citizens' Rate Review Committee at their December 9, 2009 meeting.

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DATE ACTION REQUESTED: February 7, 2011

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2011-2929

SUBJECT: To comply with GASB 54 by committing the ending fund balances of Economic Development Revolving Loan Fund and Cable TV Fund for specific purposes and delegating authority to the Finance Director for “assigning” ending fund balances.

Contact Person (Preparer) for this Resolution: Janelle Nordyke

Dept.: Finance Department

File No.:
(if applicable)

RECOMMENDATION: Adopt Resolution No. 2011-2929

EXECUTIVE SUMMARY: In February 2009, the Governmental Accounting Standards Board issued Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*, which requires the City Council to make certain decisions regarding the use of resources and classifications of ending fund balance in order for the Comprehensive Annual Financial Report (CAFR) to be in compliance with generally accepted accounting principles (GAAP). Fiscal year 2010-2011 is the first year the city must implement this new statement. The intent of GASB 54 is to improve the usefulness of the amounts reported in ending fund balances on the year-end financial reports.

With GASB 54, a hierarchy of fund balance classifications has been created. These classifications are based primarily on the extent to which governments are bound by the constraints placed on resources reported in those funds. This approach is intended to provide users more consistent and understandable information about a fund’s net resources.

For the City of Newberg, GASB 54 impacts the City’s General Fund, Special Revenue Funds, Capital Project Funds and the Debt Service Fund for the fiscal year ending June 30, 2011. Previously, the city reported fund balances that were reserved, designated, or unreserved. With the implementation of GASB 54, there are five new categories required for ending fund balances:

- **Nonspendable** - Represents assets that are nonliquid (such as inventory) or legally or contractually required to be maintained intact (such as the principal amount of an endowment)
- **Restricted** – When constraints are placed on the use of resources for a specific purpose by enabling legislation (legally enforceable), external parties or constitutional provisions
- **Committed** – When constraints are created by the governing body on how it will spend its resources. These are enacted via legislation, resolution or ordinance and are in place as of the end of the fiscal period. The constraints remain binding until formally rescinded or changed by the same method the constraints were created. The difference between Restricted and Committed is that under Committed, the governing body can remove constraints it has imposed upon itself.
- **Assigned** – Designation of amounts by either the governing body or the staff (if authorized) to be used for a specific purpose narrower than the purpose of the fund.
- **Unassigned** – The excess of total ending fund balance over nonspendable, restricted, committed and assigned amounts. Only the General Fund has an unassigned category since money remaining in any other fund is automatically designated or assigned to the purposes of that fund.

GASB 54 also redefined Special Revenue Funds to allow ending fund balances to be classified only as restricted or committed. For some of the city’s special revenue funds, this necessitates the City Council to provide direction on the intended use of resources for the future. Following is a list of the city’s Special Revenue Funds and their expected ending fund balance classifications:

Category	Fund	Restricted by:
Restricted	Street Fund	State Statute
Restricted	911 Emergency	State Statute
Restricted	Building Inspection	State Statute
Restricted	Civil Forfeiture	Federal Statute
Restricted	Library Trust	Donor Intent
Committed	City Hall	City Resolution 2122
Committed	Fire Truck Fee	City Resolution 2509
Committed	Public Safety Fee	City Order 0021
Undefined	Economic Development	City Resolution 2929
Undefined	Cable TV	City Resolution 2929

As demonstrated in this table, the city has yet to formally commit the ending fund balances of the Economic Development Revolving Loan Fund or the Cable TV Fund. Under the new GASB 54 rules, if the balance of a Special Revenue Fund is not formally restricted or committed by fiscal year end, then it must be reported as part of the General Fund for fiscal year end audited financial statement purposes. City staff recommends:

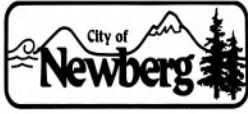
- Formally committing the ending fund balance of the Economic Development Revolving Loan Fund for purposes of economic development activities.
- Formally committing the ending fund balance in the Cable TV Fund for purposes of enhancing communications.

If necessary, the Council may, at any time, pass a resolution to commit the ending fund balance to a new purpose.

GASB 54 allows the City Council authority to “assign” ending fund balances. The pronouncement also allows the governing body to bestow this authority to a City officer or designee. To provide the City with the most flexibility in financial reporting, staff is recommending that the Finance Director be given authority to assign resources and ending fund balances if applicable.

FISCAL IMPACT: GASB 54 will not affect the calculation of the ending fund balances. This is just a reclassification of ending fund balances into five possible categories instead of the three categories prior to GASB 54.

STRATEGIC ASSESSMENT: The adoption of this resolution will allow the city to comply with the requirements of GASB 54.



RESOLUTION No. 2011-2929

A RESOLUTION ADOPTING THE IMPLEMENTATION OF GASB 54 BY COMMITTING THE ENDING FUND BALANCES OF ECONOMIC DEVELOPMENT REVOLVING LOAN FUND AND CABLE TV FOR SPECIFIC PURPOSES AND DELEGATING AUTHORITY TO THE FINANCE DIRECTOR FOR "ASSIGN" ENDING FUND BALANCES

RECITALS:

1. Prior to GASB 54, ending fund balances were specified as reserved, designated, or unreserved.
2. In 2009, GASB 54 required reclassification of the ending fund balances into five categories: nonspendable, restricted, committed, assigned, and unassigned.
3. The city has reclassified all the required ending fund balances except for the Economic Development Revolving Loan Fund and Cable TV Fund.
4. As resources are received there might be the necessity for the finance director to assign them for a specific purpose that is narrower than the purpose of the fund.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. To formally commit the ending fund balance of the Economic Development Fund to economic development activities.
2. To formally commit the ending fund balance of the Cable TV Fund to enhance communications.
3. To give assigning authority to the finance director for resources/fund balances as needed.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 8, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 7th day of February, 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 10th day of February, 2011.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through _____ Committee at ____/____/200x meeting. Or, None.
(committee name) (date) (check if applicable)

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DATE ACTION REQUESTED: February 7, 2011

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

SUBJECT: A Proclamation recognizing Coach Chris Casey for his individual accomplishments and the Aloha High School Football Team in winning the Metro League Championship for 2010.

Contact Person (Preparer) for this Motion: **Becky Green, HR Manager**
Dept.: **Administration**

RECOMMENDATION:

Approve a Proclamation recognizing Coach Chris Casey for his individual accomplishments and the Aloha High School Football Team in winning the Metro League Championship for 2010.

EXECUTIVE SUMMARY:

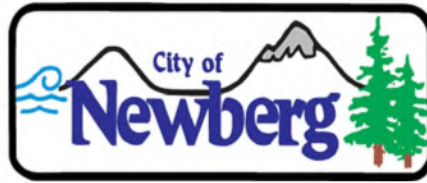
On December 11, 2010, in the Metro League championship series, the Aloha High School Football team defeated their opponent Tualatin High School with a score of 34-13 to finish their season with 8 wins and 1 loss. Coach Chris Casey was then named the Metro League Coach of the Year and on December 29, 2010 Coach Chris Casey was named Oregon 6A Schools Coach of the Year. The City of Newberg would like to recognize both Coach Chris Casey and his team for these accomplishments.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

None



PROCLAMATION

A PROCLAMATION RECOGNIZING COACH CHRIS CASEY FOR HIS INDIVIDUAL ACCOMPLISHMENTS AND THE ALOHA HIGH SCHOOL FOOTBALL TEAM IN WINNING THE METRO LEAGUE CHAMPIONSHIP FOR 2010.

Whereas, this year's Aloha High School Football team is coached by former Newberg native Chris Casey and has brought unprecedented recognition to the city of Newberg; and

Whereas, Coach Chris Casey is a graduate of Newberg High School Class of 1976 followed by attending college at Mt. Hood Community College and then graduating from Linfield College where he played football at both colleges; and

Whereas, Coach Chris Casey then taught and coached at The Dalles High School, Linfield College in McMinnville (which won the 1986 National Football Championship) and at Whitworth College in Spokane prior to going to Aloha High School; and

Whereas, the Aloha High School Football team had a regular season record of 8 wins and 1 loss, then proceeded to the 2010 Oregon High School Football Playoffs where they won their next four games against Barlow High School, Lincoln High School from Portland; Roseburg High School and Lake Oswego High School; and

Whereas, the team advanced to the State Finals at Reser Stadium in Corvallis on the Oregon State University campus on December 11, 2010 and beat their opponent Tualatin High School with a score of 34-13; and

Whereas, with the win against Tualatin High School the team won the 2010 Metro League Championship honors and Coach Chris Casey was named the Metro League Coach of the Year and then was bestowed the honor of the Oregon 6A Schools Coach of the year.

NOW, THEREFORE, IT IS PROCLAIMED by Mayor Bob Andrews and the City Council of the City of Newberg, Oregon congratulates **Newberg native Coach Chris Casey and his Aloha High School Football Team** for their outstanding performance during the football season. All of the citizens of Newberg are very proud of these outstanding accomplishments and join together to celebrate this history making victory and the honors bestowed on Coach Chris Casey.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Newberg to be affixed on this 7th day of February, 2011.

Bob Andrews, Mayor

DATE ACTION REQUESTED: February 7, 2011

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

SUBJECT: Approve the January 3, 2011, City Council Meeting minutes.

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

RECOMMENDATION:

Approve the January 3, 2011, City Council minutes for preservation and permanent retention in the City's historical records.

EXECUTIVE SUMMARY:

The City of Newberg City Council held a public meeting and minutes were recorded in text. In accordance to Oregon State Records Management law, the City of Newberg must preserve these minutes in hard copy form for permanent retention.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

None.

**CITY OF NEWBERG CITY COUNCIL MINUTES
JANUARY 3, 2011
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET**

A Work Session was held prior to the meeting. A presentation was given by Library Director Leah Griffith on the Chehalem Valley Transit. No decisions were made.

I. CALL MEETING TO ORDER

Council President Marc Shelton called the meeting to order at 7:08 PM.

II. ROLL CALL

Members

Present:	Mayor Bob Andrews	Denise Bacon	Ryan Howard	Stephen McKinney
	Bart Rierson	Marc Shelton	Wade Witherspoon	

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Barton Brierley, Planning and Building Director	Norma Alley, City Recorder
		Jennifer Nelson, Recording Secretary

Others

Present: Hank Grum, Pat Haight, and Roger Wiltshire

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. OATH OF OFFICES

Municipal Judge Larry Blake led the Oath of Offices for Mayor Bob Andrews, Councilor Bart Rierson, Councilor Stephen McKinney, and Councilor Ryan Howard.

V. COUNCIL PRESIDENT ELECTION

Councilor Shelton and Councilor McKinney nominated Councilor Bart Rierson to be the new Council President.

<p>MOTION: Andrews/Shelton to elect Councilor Bart Rierson as Council President by an acclamation of anonymous votes. (7 Yes/0 No) Motion carried.</p>

VI. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, spoke of wrapping up 2010 with the newly adopted mission statement and looking forward to the new year with upcoming work on the vision statement and core organization values. He also spoke of the first City Council budget meeting coming up on January 24, 2011, to seek direction on tackling budget shortfalls.

VII. PUBLIC COMMENTS

Mr. Hank Grum spoke of an article that disturbed him concerning the lack of funding for Other Pension Employee Benefits (OPEB) and unfunded liabilities facing Newberg; he wondered if the city was aware of this and how they plan to address it. Mayor Andrews said the city is aware of the matter and of the actuary review.

Ms. Pat Haight addressed items she came across while reviewing the accounts payable ledger for the city regarding checks written to The Allison for a City/County Dinner not matching up, a check written to Hazelden.

Mr. Roger Wiltshire reiterate his previous request for the resignation of the city manager, the reduction of his spending authority, and requiring him to have a computer at a meeting to produce immediate information to answer questions asked of him. Councilor Bart Rierson said he felt the city manager along with other staff members mentioned at previous meetings are doing a fine job and he is pleased with their work. He is sorry to hear there is some disagreement; but, although Mr. Wiltshire may not like what they are doing, there are others that do.

VIII. PUBLIC HEARINGS

1. Consider a motion approving **Order No. 2011-0030** amending the Comprehensive Plan map designation from Low Density Residential (LDR) to High Density Residential (HDR) and amend the Zoning designation from R-1 (Low Density Residential) to R-3 (High Density Residential) for a property located at 1103 North Meridian Street.

TIME – 7:35 PM

Barton Brierley updated the Council on the meeting between the Housing Authority of Yamhill County (HAYC) and the Meridian Street neighbors. The group has asked for more time to pursue some alternatives suggested amongst the group. He requested a continuation to the February 7, 2011, meeting.

MOTION: Shelton/McKinney to postpone the deliberations and continue the hearing until the February 7, 2011, City Council meeting to allow for the citizens and HAYC to have a chance to meet again. (7 Yes/0 No)
Motion carried.

3. Consider a motion approving **Ordinance No. 2011-2735** establishing provisions for second-hand dealers to operate in the city.

TIME – 7:56 PM

This item was heard out of agenda order.

Mr. Mahr reported the legal department and police department have been working to establish this ordinance, modeling it off of what the City of Portland uses. Within this week, Portland had more feedback on the ordinance and there were discussions about coordinating with a county-wide ordinance and electronically interfacing efforts between the city, county, and other surrounding entities. The detective working closely with this matter requested postponing the decision until February 22, 2011.

Councilor Marc Shelton was concerned with making this too extensive. He is in favor of holding the decision over; however, he would like to see something that meets the requirements of the Oregon Revised Statutes (ORS) and not have the ordinance go beyond that.

MOTION: Shelton/Bacon to postpone deliberations on **Ordinance No. 2011-2735** until February 22, 2011.

Councilor Stephen McKinney wondered about distinguishing between resale brokers and pawn shops and what cooperative efforts would look like between Newberg, the County, and other cities to minimize the risk of criminal activity.

Councilor Rierson encouraged staff to closely examine the regulations dealing with the purchase of second hand scrap metals.

Councilor Shelton added they would like the ordinance brought back to them as clean as possible since the first reading has already brought about several questions. He also stated he would be more comfortable with second-hand or a consignment ordinance as the title rather than calling it the pawnbroker ordinance.

MOTION: To postpone **Ordinance No. 2011-2735** until February 22, 2011. (7 Yes/0 No) Motion carried.

2. Consider a motion approving **Ordinance No. 2011-2733** adopting the reformatted, indexed, and republished Newberg Municipal Code and declaring an emergency.

TIME – 7:54 PM

Ms. Norma Alley, City Recorder, presented the staff report (see official meeting packet for full report).

Councilor Ryan Howard expressed his discomfort for including an emergency clause when he felt it is not justifiable. He also referred to several items he considered substantive changes of the code and asked staff to clarify those changes. He referred to language changes on page 17 regarding non-voting members and page 29 changes to time period for removal of carcasses to five days.

Ms. Alley replied the changes to ex-officio and non-voting members were to bring the code into line with the current charter; the matter was passed by City Council, but not through code. The second change of a general statement to a number of specific days is to reflect the current standard for when a carcass becomes rotten. The reason staff did not consider items like this substantive is because it is just a matter of updating language to reflect current code, state laws, standards, or practices without changing the original intent of the code. Ms. Alley continued by addressing the declaration of the emergency clause; the purpose is to make it clear when changes are being made and reduce the error for personnel when citing the code, avoiding an unclear period between approval, changes made, and effective dates. It is also strongly suggested no ordinances be approved between now and the thirty days if emergency clause is not in effect.

Councilor Rierson referred to pages 11 and 15 concerning the references to “electors” and “voters” and preferred the terms would be consistent. He asked about page 14 and the current procedure for bonds for city officials. Staff stated this section is not currently being practiced and because it is more substantial it will be coming before Council at a later date; they researched this and it is not a requirement of ORS for bonding, but it is good practice and the city’s auditors would like to see it. Councilor Rierson also wanted to see the references to “the commission” under staff services and “planning commission” under conflict of interest on page 17 to be the same term. He also had concern with the change on page 31 to remove “and/or public intoxication, as defined...” because he did not feel that citizens looking at the code would understand when things are “as defined in the ORS”. He felt including the title of the ORS would help make the document more readable or simplified.

Councilor Wade Witherspoon asked why the whole section on section histories and statutory references was deleted. Staff replied it was unnecessary because this section is just highlighting what is clearly seen in the code and already in the state laws. Councilor Witherspoon discussed several other clarifications with staff and requested that page 33 under public danger, the reference to “him” should be “him or her” and these kinds of gender neutral references should be consistent throughout the document. Staff replied there will be an overall

search in the entire document to change gender specific references to be gender neutral. This is noted on the first page of the exhibit as the first star.

Councilor Denise Bacon suggested moving the comma on page 24 under administration forward one word. Also, there was a reference to “servant” in the definition of family in the definition section; she suggested finding what that term should be and change it.

Mr. Hank Grum stated he also had a list of concerns, but he is happy to say most were allayed by the Council. He also expressed concerns about references to state documents and what happens to the references when the state documents change and are no longer in agreement with what the city’s desires are. He also felt the emergency clause may be for the convenience of the codification company, not necessarily to the city’s benefit. He was concerned more substantive changes would be snuck into the code amendments and he appreciates the Council taking the time to look over this in detail.

Ms. Pat Haight wondered about the emergency clause and the possible loss of what was desired ten to fifteen years ago when the codes were established by cleaning them up. She also expressed concerns over trusting an outside organization and how much it costs the city for their services.

Mayor Andrews asked if the city is consistent with how they handle vacancies and removals among the various commissions/committees/boards. Ms. Alley replied the city is not currently consistent, but is considered a substantial change they are not bringing up within the recodification; this is an item staff intends to bring back to Council at another time.

Discussion followed about section 2.20.050 regarding retirement contributions and its relation to recent Budget Committee decisions. Staff stated this item will be removed from the recodification to be addressed and brought back to Council for action at a later time.

Brief discussions followed about the references to “the city” and what specific part of “the city” a citizen would need to address for various issues, the need for consistency with using a lowercase “c” verses an uppercase “c” when referring to “the city” throughout the document and other city documents, and checking the consistency with the use of the term “Planning Director” verses “Planning and Building Director”.

Councilor McKinney supported using the emergency clause because it would leave no ambiguity and settles things for now; items can always be addressed later if items are found in need of being rewritten.

Councilor Shelton added it was not the emergency clause itself he had a problem with, it was just the date. He just wants to ensure that what the emergency clause is and why it is being enacted is clearly stated.

Staff was directed to make the recommended changes discussed and to postpone this item to February 7, 2011, in order to complete those changes.

MOTION: Shelton/Witherspoon to postpone **Ordinance No. 2011-2733** until the February 7, 2011, City Council meeting. (7 Yes/0 No) Motion carried.

IX. COUNCIL BUSINESS

TIME – 10:03 PM

Councilor Rierson and Councilor Bacon spoke about the kayak rental facility project they are working on through the Ford Family Foundation and requested consideration of in-kind staff contributions from the city.

Discussions followed about the distribution of the Legal Bulletin and suggestions for making it more useful to the needs of the Council.

X. ADJOURNMENT

The meeting adjourned at 10:35 PM.

ADOPTED by the Newberg City Council this 7th day of February, 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 10th day of February, 2011.

Bob Andrews, Mayor

DATE ACTION REQUESTED: February 7, 2011

Order ____ Ordinance XX Resolution ____ Motion ____ Information ____
No. No. 2011-2733 No.

SUBJECT: Adopting the reformatted, indexed, and republished Newberg Municipal Code

Contact Person (Preparer) for this Ordinance: Norma Alley, City Recorder
Dept.: Administration

HEARING TYPE: **LEGISLATIVE** **QUASI-JUDICIAL**

RECOMMENDATION: Adopt Ordinance No. 2011-2733 adopting the reformatted, indexed, and republished Newberg Municipal Code.

EXECUTIVE SUMMARY:

Code Publishing provided the City with a legal analysis and suggested editorial clean ups. A team of employees was formed and worked diligently together reviewing and addressing the suggested changes from Code Publishing.

In 2008, the City contracted with Code Publishing to take over the codification of City ordinances. In addition to the codification services, the City included in the contract a legal review, also known as recodification, of the current Code. This recodification consisted of a legal review, reformatting, indexing, and cleaning up of obsolete ordinances in order to ensure we are in compliance with Oregon State laws, to clean up editorial mistakes that had happened over the years, and to republish Newberg’s Municipal Code that will be applicable to today.

Code Publishing provided a proof, editorial comment, and legal analysis of the recodification in June, 2008, and since then a team of staff, one representative from each department, has been working diligently together reviewing and addressing the suggested changes from Code Publishing. Attached you will find a table listing the changes. Once these changes are approved, our recodified Code will be published and will remain up-to-date on a monthly basis or as needed. Staff will also continue to address ongoing items left in the legal analysis and will bring forth to the Council ordinances with recommended changes.

On January 3, 2011, the City Council reviewed the ordinance and had some additional changes as noted in Attachment “A”, which is attached and by this reference incorporated. Staff has made these changes and noted those changes in Exhibit “A”.

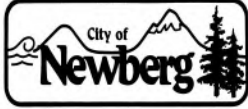
The current City Code is available for viewing at <http://codepublishing.com/OR/Newberg/> as well as a proof copy of the new Code at <http://www.newbergoregon.gov/citycouncil/event/city-council-business-meeting-5> or by contacting the City Recorder’s Office at (503) 537-1283.

FISCAL IMPACT: To finish this step of the recodification it will be \$8,000.00, which is a budgeted expense in 31.1230.580.

STRATEGIC ASSESSMENT: Having a relevant municipal code is vital to the peace, health, safety, and general welfare of the people of the City of Newberg.

**List of Changes Made to Ordinance No. 2011-2733
(Changes received from Council on January 3, 2011)**

Reference	Change
1.05.050 Definitions	Replaced servants with household employee
2.05.060 Filing	Replaced voters with electors
2.05.110 Residence defined	Replaced voter with elector (twice in sentence)
2.20.060 Bond for city officials	Replaced gender references to be gender neutral
3.25.050	Replaced gender references to be gender neutral
2.15.400 Powers and duties	Replaced sewer with wastewater
2.20.050 Retirement contribution	Removed entirely to address at another time
2.30.090 Jury list	Replaced registered voters to electors
2.35.100 Procedure	Replaced gender reference to be gender neutral
3.10.010 Definitions	Replaced gender reference to be gender neutral
3.10.120 Refunds	Replaced gender reference to be gender neutral
3.10.140 Administration	Moved the comma from behind during to behind examine
8.15.160 Unlawful businesses	Added the ORS title
9.20.020 Children confined in vehicles	Replaced gender references to be gender neutral
9.25.170 Clearing of litter from private and adjacent public places by city.	Replaced gender references to be gender neutral and removed some legalese language of hereunder and hereby
10.05.070 Public danger	Replaced gender references to be gender neutral
12.05.050	Replaced gender references to be gender neutral
13.10.070 Wastewater connection procedures	Replaced sewer with wastewater
13.10.190 Revocation of permit	Replaced sewer with wastewater
13.10.240 Customer classes	Replaced sewer with wastewater
13.10.260 Customers outside city	Replaced sewer with wastewater
14.05.050 Adoption of state codes	Removed capitalization of director for consistency
14.05.260 Establishment of fees	Removed the word within
15.05.030 Definitions	Added the definition of Family to replace servant with household employee
15.302.030	Replaced gender reference to be gender neutral
15.340.030	Replaced director with planning and building director or designee
Table C-1	Removed year references in the ordinances
15.510.080 Easements of utilities	Replaced sewer with wastewater and removed the space between storm and water to be one word



ORDINANCE No. 2011-2733

**AN ORDINANCE ADOPTING THE REFORMATTED, INDEXED, AND
REPUBLISHED NEWBERG MUNICIPAL CODE AND DECLARING AN
EMERGENCY**

RECITALS:

1. The Newberg Municipal Code was adopted by the City Council on November 19, 2001, by Ordinance No. 2001-2547. On January 20, 2004, the City Council approved Ordinance No. 2004-2582 incorporating ordinances there were erroneously omitted.
2. Between January, 2004 and June, 2008, the City had undergone ten (10) supplements with the assistance of American Legal Publishing under contract. The Municipal Code was in a need of a legal review. It is good practice for a City to engage in a legal review every five (5) years to ensure it is compliant with today's State laws and applicable to the current community needs.
3. In June, 2008, the City of Newberg contracted with Code Publishing in a recodification project. This recodification consisted of a legal review, reformatting, indexing, and cleaning up of obsolete ordinances in order to republish Newberg's Municipal Code that is applicable to today.
4. Corrections have been made to the Code, which is outlined in Exhibit "A" and by this reference incorporated.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. **1.01.010 CODE ADOPTED.**

There is hereby adopted the recodified "Newberg Municipal Code," as revised, reformatted, indexed, edited, and re-published by Code Publishing Company, Seattle, Washington, which is shown in Exhibit "A" and by this reference adopted.

2. **1.01.020 TITLE, CITATION, REFERENCE.**

This code shall be known as the Newberg Municipal Code and it shall be sufficient to refer to it as the Newberg Municipal Code or the City Code or the Newberg City Code or the City or Municipal Code in any prosecution for any violation of any its prohibitions or offenses or in any proceeding at law or in equity.

3. **1.01.030 CODIFICATION OF ORDINANCES; AUTHORITY FOR SERVICE.**

This Code consists of all regulatory, penalty, and administrative ordinances of the City of Newberg, Oregon of a general and permanent character. Code Publishing Company, of Seattle, Washington is hereby authorized to revise, index, reformat and re-publish such as this Code of ordinances and to make and publish future editorial amendments, technical corrections, revisions, reformats and

supplements that do not affect the substantive meaning of this Code for the City.

4. **1.01.040 REPEAL OF CONFLICTING PROVISIONS.**

Any ordinance not preserved as changed, added to or perfected by this revision, codification, and compilation that is in conflict with any portion(s) of this Code is hereby repealed, subject to the provisions of §1.04.060 of this Code.

5. **1.01.050 ORDINANCES PASSED PRIOR TO CODE ADOPTION.**

The last ordinance included in the original code is, 2008-2692 passed on March 3, 2008. The following ordinances, passed subsequent to Ordinance 2008-2682, but prior to adoption of this code, are hereby adopted and made a part of this code: Ordinances 2008-2683 to 2010-2732.

6. **1.01.060 EFFECT OF CATCH LINES.**

Title, chapter and section headings shall not be deemed to govern, limit, modify or affect the scope, meaning or intention of any section, chapter, or title of this Code.

7. **1.01.070 EFFECT ON PAST ACTIONS AND OBLIGATIONS.**

Neither the adoption of this Code nor the repeal or amendments of any ordinance or part or portion of any ordinance shall affect the prosecution for ordinance violations that were committed prior to the effective date of this Code adoption. The adoption of this Code shall not be construed as a waiver of any license, fee, penalty, debt, forfeiture or obligation due and unpaid to the City on the date this Code takes effect. All rights, fines, entitlements, duties, and proceedings existing pursuant to any ordinance on the date of the adoption of this Code shall remain in effect unless specifically repealed in this Code adoption. No bonds or cash required to be posted, filed or deposited pursuant to any ordinance shall in any way be made invalid by this code adoption.

8. **1.01.080 REFERENCES TO ORDINANCES IN MATTERS OF RECORD.**

Any reference in matters of record to any ordinance existing prior to the adoption of this Code shall be construed to apply to the corresponding Code provisions in effect at the time of codification. Copies of this Code that have been duly certified by the City Clerk shall be received without further proof as prima facie evidence of the provisions of such Code in all courts and administrative tribunals of this state.

9. **1.01.090 SEVERABILITY.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code is declared unconstitutional or without effect by any final judgment or decree of a court of competent jurisdiction, such judgment or decree shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: March 9, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 7th day of February, 2011, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Norma I. Alley, City Recorder

ATTEST by the Mayor this 10th day of February, 2011.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through City Council at their January 3, 2011, meeting.

**City's Editorial Changes
For Code Publishing's June, 2008, Proof**

Additions are noted as red text and bolded

~~Deletions are noted with strikethrough and highlight~~

*Research/project changes

**Question/clarification

*Go through and change transient room tax to transient lodging tax (this will be consistent with the State).

*Go through and identify where it states the gender and remove/reword.

*Go through and change council to city council.

*Go through and where it states State law/s, list the statutory reference (as defined and shown in 2.05.030) and include in Statutory Reference Table.

*Go through and replace sanitary, sewer, sewerage, sewage, etc. with wastewater (one word).

*Go through and change storm water to stormwater (no space, it is one word now).

*Go through and identify the therefore, therefor, thereon, thereof, hereby, hereof and remove/reword.

*Go through and change police chief to chief of police.

*Go through and change any references of Adec, ADEC, etc. to A-dec.

*Go through and remove the approval year in ordinance and resolution numbers (ex: Ord. 2546 instead of Ord. 2000-2546).

*Place a space between the forms language and the following paragraph (ex: between the sections of 14.05.050(2)(b) and 14.05.050(C)).

*In the Tables

- Create a Special Ordinances Table
- Change the ORS Reference Table to Statutory Reference Table and include the Oregon Administrative Rules.
- Resolution Table is incomplete
 - Go through Code to identify resolution references and list on the Resolution Table.
- Ordinance Table is incomplete
 - Only include the last four numbers of the ordinances (leave off the first four which indicates the year it was approved). Including the year started with Ordinance 2221.
 - Change Description to Title. It is important this is the full title of the ordinance instead of a short description. We use this as means for searching for other types of documents referenced in the title.
 - When ordinances have been repealed or superseded, list the ordinance that repealed or superseded it
 - Change notation of repealer to the actual disposition of the ordinance (ex: repealed Ord. 141, codified 2.05/repealed by Ord. 145)
 - When noted not codified, also note on Special Ordinance Table

Page # & Comment	Language Changes
1-3	1.05.010 Title of code. This codification of ordinances by and for Newberg shall be designated as the Code of Newberg Municipal Code and may be so cited.
1-3 Family definition came from Dev. Code 15.05.030 Written is added for 2.15.190(A)	1.05.050 Definitions. “City,” “municipal corporation,” or “municipality” means the e City of Newberg, Oregon. “City,” means the City of Newberg as a community comprised of its citizens. “City engineer,” means the duly appointed official or, if such official does not exist, a designated engineer or firm of engineers, charged with engineering responsibilities. “Family,” means an individual, or two or more persons related by blood or marriage, or a group of not more than five persons (excluding household employee) who need not be related by blood or marriage, living together in a dwelling unit. “Family” may include two or more people with disabilities, as defined in the Fair Housing Amendments Act of 1988, living as a single housekeeping unit. “Written,” means correspondence in the form of letters or emails received.
1-4	1.05.060 Rules of interpretation. D. General Term. A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.
1-4	1.05.080 Reference to other sections. Whenever in one section reference is made to another section hereof , such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.
1-4	1.05.120 Reasonable time. A. In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, “reasonable time or notice” shall be deemed to mean the time which is necessary for a prompt timely performance of such act or the giving of such notice. B. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be falls on a Saturday, Sunday, or Holiday , it shall be excluded.
1-5 Already defined in charter	1.05.150 Effective date of ordinances. A. All ordinances passed by the legislative body requiring publication shall take effect on the thirtieth day after their enactment, per Section 18 of the City Charter. B. In case of an emergency per Section 18 of the City Charter, the legislative body may also provide that an ordinance shall take effect immediately, or at any time therein provided. [Code 2001 § 10.15.]
1-5	1.05.170 Ordinances which amend or supplement code. B. Any ordinance which the legislative body proposes to add to the existing code as a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of such chapter or section. In addition to such indication thereof as may appear in the text of the proposed ordinance, the legislative body shall see to it that a caption or title shall be shown in concise form above the ordinance. [Code 2001 § 10.17.]

Page # & Comment	Language Changes
1-5 Not necessary to have	<p>1.05.180 Section histories— Statutory references.</p> <p>A. As histories for the code sections, the specific number and passage date of the original ordinance, and amending ordinances, if any, are listed following the text of the code section. Example: [Ord. <u>185</u>, 1-1-85; Ord. <u>180</u>, 1-1-80; Ord. <u>170</u>, 1-1-70; Ord. <u>161</u>, 5-13-60.]</p> <p>B. Statutory Cite.</p> <p>1. If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute. Example: (ORS <u>192.410</u>) [Ord. <u>185</u>, 1-1-85; Ord. <u>180</u>, 1-17-80.]</p> <p>2. If a statutory cite is set forth as a “statutory reference” following the text of the section, this indicates that the reader should refer to that statute for further information.</p> <p>Example:</p> <p>2.40.010 Public records available.</p> <p>This city shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.</p>
1-6 Move to Chapter 2.05 Article II. City Elections & renumber the sections thereafter.	<p>1.05.200 2.05140 Qualifications of chief petitioner(s) for initiative petitions and referendums.</p> <p>Any elector may be a chief petitioner(s) for any initiative or referendum measures on which the chief petitioner(s) is entitled to vote.</p>
1-5	<p>1.05.190 Amendment to the Charter.</p> <p>A. An amendment of the City Charter may be proposed and submitted to the electors of the city thereof by resolution of the council without an initiative petition.</p> <p>B. No amendment to the Charter shall be effective until it is approved by a majority of the votes cast thereon by the electors of the city.</p>
2-3 List statutory reference at end of article	<p style="text-align: center;">Article II. City Elections</p> <p style="text-align: center;">Statutory reference: for provisions concerning State election law, see ORS 240-260.</p>
2-4	<p>2.05.050 Acceptance of nomination required.</p> <p>D. Several different certificates of nomination or petitions for nomination may thus be filed nominating the same person for the same office, and the person so nominated may accept one or more of said nominations; but unless such nominee accepts a nomination in some one of the ways and within the time aforesaid, it shall not be considered as complete.</p>
2-4	<p>2.05.060 Filing.</p> <p>A. All certificates of nomination and petitions shall be filed with the city recorder not later than 80 days prior to the day fixed by law for the election.</p> <p>B. The city recorder shall accept for filing any certificate of nomination or petition for nomination, subject to the verification of the number and genuineness of the signatures and voting qualifications of the persons signing the same by reference to the registration books in the office of the county clerk.</p> <p>C. If a sufficient number of qualified voters electors are found to have signed the certificate of nomination or petition for nomination, the city recorder shall file the same within 10 days after its presentation thereto, and transmit the same to the county clerk in the manner required by law.</p>

Page # & Comment	Language Changes																	
2-4 & 2-5	<p>2.05.070 Nomination forms.</p> <p style="color: red;">Said nomination forms shall be upon a form approved by the City and shall follow all state law.</p> <p>A. Certificate of Nomination. The following shall be substantially the form of the certificate of nomination of a candidate for municipal office, other than city council member, to be filed with the voters of the city at large:</p> <p style="text-align: center;">CERTIFICATE OF NOMINATION</p> <p>We, the undersigned electors and regular voters of the City of Newberg, Yamhill County, Oregon, certify that we hereby nominate _____ for the office of _____ of the City of Newberg. We further certify that said _____ now resides, and has or will have resided, within the city for at least one year immediately preceding the election, that he (she) is an elector of the city, and we hereby request that his (her) name be placed upon the ballot as a candidate for the office of _____ at the general election to be held on the _____ day of November, 20__.</p> <p>NAME — ADDRESS (Here follow numbered lines for signatures)</p> <p>B. Petition for Nomination. The following shall be substantially the form of the petition for nomination of a candidate for a position of city council member:</p> <p style="text-align: center;">PETITION FOR NOMINATION PETITION I.D. _____</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="padding: 5px;">CANDIDATE'S NAME</td> <td rowspan="2" style="padding: 5px; vertical-align: top;">THIS IS A CANDIDATE NOMINATING PETITION. SIGNERS OF THIS PAGE MUST BE ACTIVE REGISTERED VOTERS IN _____ COUNTY ONLY</td> </tr> <tr> <td style="width: 30%; padding: 5px;">OFFICE</td> <td style="padding: 5px;">DISTRICT, POSITION, DEPARTMENT OR ZONE NUMBER (IF APPLICABLE)</td> </tr> </table> <p>TO THE SECRETARY OF STATE/COUNTY ELECTIONS OFFICIAL/CITY RECORDER:</p> <p>We, the undersigned voters, request that the candidate's name printed above, for nomination to the office indicated, be placed upon the appropriate ballot at the next _____ election following the filing of this petition.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 25%; padding: 5px;">SIGNATURE</td> <td style="width: 15%; padding: 5px;">DATE</td> <td style="width: 25%; padding: 5px;">PRINT RESIDENCE</td> <td style="width: 35%; padding: 5px;">CITY AND ZIP CODE</td> </tr> <tr> <td></td> <td style="padding: 5px;">SIGNED</td> <td style="padding: 5px;">NAME ADDRESS</td> <td></td> </tr> <tr> <td></td> <td style="padding: 5px;">(MO/DAY/YR)</td> <td style="padding: 5px;">(NUMBER AND STREET)</td> <td></td> </tr> </table> <p>(Here follow numbered lines for signatures)</p>	CANDIDATE'S NAME		THIS IS A CANDIDATE NOMINATING PETITION. SIGNERS OF THIS PAGE MUST BE ACTIVE REGISTERED VOTERS IN _____ COUNTY ONLY	OFFICE	DISTRICT, POSITION, DEPARTMENT OR ZONE NUMBER (IF APPLICABLE)	SIGNATURE	DATE	PRINT RESIDENCE	CITY AND ZIP CODE		SIGNED	NAME ADDRESS			(MO/DAY/YR)	(NUMBER AND STREET)	
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	SIGNED	NAME ADDRESS																
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Page # & Comment	Language Changes
2-5	<p>2.05.080 Verification and eCertification forms.</p> <p>A. Verification of Certificate of Nomination. Each and every sheet of every certificate of nomination of candidates for municipal offices, to be filed by the voters of the city at large, shall be verified on the back thereof in substantially the following form by the person who circulated such certificate of nomination by affidavit thereon, as follows:</p> <p>STATE OF OREGON → County of Yamhill →) ss. City of Newberg →)</p> <p>I, _____, being first duly sworn, say that (here shall be legibly written or typewritten the names of the signers of the sheet) signed this sheet of the foregoing certificate of nomination, and each of them signed his or her name thereto in presence; I believe that each has stated his or her name, residence, and street number correctly, and that each signer is a legal voter of the City of Newberg and has resided therein for at least three months last past.</p> <p>_____ Subscribed and sworn before me this _____ day of _____ A.D., 20 ____.</p> <p>(Signature, title and residence of officer)</p> <p>B. Circulator's Certification of Petition for Nomination. Each and every sheet of every petition for nomination for candidates for positions on the city council, to be filed by voters electors of the state city whose residence is within the district for which the candidate is being nominated, shall bear a certification in substantially the following form by the person who circulated it. Said nomination form shall be upon a form approved by the City and shall follow State law.</p> <p style="text-align: center;">CIRCULATOR'S CERTIFICATION</p> <p>I hereby certify every person who signed this sheet did so in my presence and I believe each person is a qualified voter in the State of Oregon (ORS 249.061). Warning: Falsely signing this statement may result in conviction of a felony with a fine of up to \$100,000 and/or prison for up to five years (ORS 260.715).</p> <p>Signature of circulator _____ Printed name of circulator _____ Circulator's address (street, city, and zip code) _____</p>
2-6	<p>2.05.090 Acceptance form.</p> <p>The City shall have a form for accepting nominations for elected positions. Said form shall be upon a form approved by the City and shall follow all State laws.</p> <p>The following shall be substantially the form for an acceptance of nomination:</p> <p style="text-align: center;">ACCEPTANCE OF NOMINATION</p> <p>I hereby accept the within nomination for the office of _____ of the City of Newberg, Yamhill County, Oregon, and consent to be a candidate for such office at the election to be held November _____, 20__, and if elected, I will qualify as such officer and serve as such to the best of my ability.</p> <p>Dated at Newberg, Oregon, this _____ day of _____, 20__.</p>
2-6	<p>2.05.100 Forms not mandatory.</p> <p>A. The forms herein are not mandatory and, if substantially followed in any certificate of nomination, shall be sufficient, disregarding clerical or technical errors.</p> <p>B. However, the petition for nomination for city council positions, along with accompanying the circulator's verification form, shall both be in substantially the form provided for herein.</p>
2-6	<p>2.05.110 Residence defined.</p> <p>The residence of any voter elector under the terms of this article shall be considered to be where his or her family the elector is registered and resides for the majority of the time. or in the case he or she has no family, where he or she sleeps.</p>

Page # & Comment	Language Changes
2-6	<p>2.05.130 Method for breaking a tie vote in the election of elective officers.</p> <p>A. Whenever a tie shall appear in the vote cast for an elective office or elective offices under the City Charter, the city recorder shall prepare lots consisting of slips of paper, each containing the name of one candidate who shall be involved in such tie.</p> <p>B. The city recorder shall fold each slip separately and place the same in a receptacle.</p> <p>C. The city recorder shall then cause the chief of police to draw therefrom as shall provide for the filling of such elective office or offices in accordance with the City Charter.</p>
2-7	<p style="text-align: center;">Article IV. Ordinances</p> <p>2.05.170 Introduction of ordinances. All ordinances shall be introduced at regular or special meetings of the city council, and may be passed at such meetings. [Ord. 895, 3-25-40. Code 2001 § 30.40.]</p> <p>2.05.180 Records. All ordinances passed by the city council and approved by the mayor shall be recorded by the recorder in a book kept for that purpose. [Ord. 895, 3-25-40. Code 2001 § 30.41.]</p>
2-7	<p>2.05.190 Penalty.</p> <p>A. Any person violating any of the provisions of NMC 2.05.020 through 2.05.120 shall have committed a city Class 4 civil infraction and shall be processed in accordance with the procedure set forth in the uniform civil infraction procedure ordinance, Chapter 2.30.210 NMC. Each day that such a violation shall continue shall be considered a separate violation.</p>
2-8 Authority already given through ORS	<p>2.10.010 Conveying title to real estate on city's behalf. The mayor and the city recorder are hereby authorized and empowered to execute on behalf of the city deeds conveying title to real estate, the sale of which has been or may hereafter may be authorized by the council. [Ord. 896, 3-25-40. Code 2001 § 31.01.]</p>
2-8	<p>2.120.0260 Bonds for city officials.</p> <p>A. The hereinafter designated officers shall furnish official bonds in the following amounts: Municipal judge \$1,000 City recorder \$10,000</p> <p>B. The city official shall give a bond in standard form with good and sufficient surety, or a bond executed by a surety company authorized to do business in this state, conditioned upon the faithful accounting of all monies received by such official in his or her the official's official capacity and the faithful performance of all of his or her the official's duties.</p> <p>C. The reasonable compensation payable to lawfully authorized surety companies as premium on the official bonds of city officers shall be paid by the city out of the general fund.</p> <p>D. The bonds of said officials shall be approved by the council in regard to all qualifications except form, which shall be approved by the city attorney.</p> <p>E. Having been duly approved as provided herein, the bond shall be placed on file in the city recorder human resources's office before such city official shall assume his or her official duties.</p> <p>1. If any official shall fail to file his or her their bond as provided herein, within one day after the beginning of such official's term of office, the council shall declare said office vacant.</p> <p>2. In such event, an appointment shall be made or an election shall be called to fill said vacancy in the manner provided by charter or ordinance for the filling of vacancies brought about by other contingencies causing vacancies.</p>

Page # & Comment	Language Changes
2-8 Established in Charter Section 34(e)	<p>2.10.030 Council not to interfere with appointments or removals.</p> <p>Except by formal action at an open meeting, neither the council nor any member thereof shall direct the appointment, employment or removal of any person to or from any office or position by the city manager. Except for the purpose of inquiry, the council and its members shall deal with the administrative service of the city solely through the city manager and neither the council nor any member thereof shall give orders to any officer or employee of the city, publicly or privately.</p>
2-9 Move to 3.25.050(E)	<p>2.10.040 3.25.050</p> <p>E. Emergencies. In case of accident, disaster or other circumstance creating a public emergency, the city manager may award contracts and make purchases for the purpose of meeting said emergency; but he shall promptly file promptly with the council a certificate showing such emergency and the necessity for such action, together with an itemized account of all expenditures.</p>
2-9 Established in Charter Section 35	<p style="text-align: center;">Article III. City Attorney's Office</p> <p>2.10.050 Legal advice—Representation.</p> <p>It is the policy of the city that the city attorney's office give legal advice and represent the city in all matters. [Ord. 93-2358, 6-22-93. Code 2001 § 31.30.]</p> <p>2.10.060 Employment of special counsel.</p> <p>When it becomes necessary for the city to employ special counsel, the city attorney's office shall secure such special counsel, making appropriate financial arrangements through a fee agreement, ensuring that all expenditures are within appropriate budgetary amounts and supervising such special counsel to ensure efficiency, responsiveness and economy of funding of services.</p>
2-9 This position is designated at the County not the City	<p style="text-align: center;">Article IV. City Health Officer</p> <p>2.10.070 Position created.</p> <p>There is hereby created the position of city health officer. [Ord. 1048, 1-3-49. Code 2001 § 31.40.]</p> <p>2.10.080 Appointment and term of office.</p> <p>The city health officer shall be appointed by the city council for a term of two years, and a majority of all members elected to the council shall be necessary to appoint. [Ord. 1048, 1-3-49. Code 2001 § 31.41.]</p> <p>2.10.090 Removal from office.</p> <p>The city health officer may be removed by the city council at any time for misfeasance, malfeasance, neglect or incompetence. [Ord. 1048, 1-3-49. Code 2001 § 31.42.]</p> <p>2.10.100 Compensation.</p> <p>The city health officer shall be compensated in accordance with such schedule of compensation as may be now or hereafter provided by city ordinance. [Ord. 1048, 1-3-49. Code 2001 § 31.43.]</p> <p>2.10.110 Powers and duties.</p> <p>A. The city health officer shall have such powers and shall perform such duties as may be now or hereafter provided by ordinance.</p> <p>B. The city health officer shall also assist city officers when called upon, from time to time, in all matters appertaining to the health and sanitation of the city and its inhabitants.</p>
2-10 Reorganize to have the articles in order of the chapter title and alphabetical	<p>Article II. Public Library Board</p> <p>Article VH. Traffic Safety Commission</p> <p>Article IVH. City Planning Commission</p> <p>Article IV. Police Department</p> <p>Article VIII. Citizens' Rate Review Committee</p> <p>Article VI. Penalty</p> <p>*Please do a search in this chapter to change everywhere Citizens, as referenced to the committee, is listed to Citizens'. Citizens' is ownership.</p>

Page # & Comment	Language Changes
2-12	<p>2.15.080 Membership. The commission shall consist of nine voting members. The mayor, city manager, police chief, and city engineer and a student from one of the local high schools shall serve as ex officio nonvoting members of the commission.</p>
2-12	<p>2.15.110 Vacancies and removals. The city council shall fill vacancies and remove commissioners as follows: A. Any vacancy on the commission shall be filled by appointment by the mayor with the consent of the city council for the unexpired term of the predecessor in the position. B. A member of the commission may be removed by the city council after a hearing for misconduct or nonperformance of duty. C. A member who is absent from two consecutive meetings without an excuse, as approved by the commission, is rebuttably presumed to be in nonperformance of duty and the city council shall declare the position vacant unless finding otherwise following a hearing.</p>
2-13	<p>2.15.150 Authority. The commission shall conduct hearings to consider and make decisions concerning its duties and deciding upon locations of parking, crosswalks, safety zones, and traffic control signs within the community in the following procedure: A. Limited Traffic Decisions. The commission shall make limited traffic decisions, which are traffic decisions which affect one particular location and are confined to one location, in the following manner: 1. Notice of the commission’s limited traffic decision shall be given to the owners of the property that is within 300 feet of adjacent to the location of the traffic control change in which the decision is concerned. 2. In addition to the decision, the notice shall state the following: a. That tThe person can submit written comments within 14 days of the notice giving any input concerning the decision. The address where written response should be addressed shall be stated. b. The person may request a public hearing concerning the decision and that if two or more adjacent property owners request the public hearing, a public hearing shall be held. c. That tThe person respondent shall give the name, address and location in which it wishes to receive the notice of public hearing and final decision when it is made. B. General Traffic Decisions. General traffic decisions are decisions which affect the entire community, or are decisions which affect a number of locations. Such decisions are truck routes, general parking policies, parking for one-way grids affecting more than one block, general signage policies, traffic safety hazard policies and traffic safety programs. Such decisions shall be made in the following manner: 2. Such notice shall state the following: a. The time, date and place of the hearing. b. The recommended decision to be made. c. The criteria to be used in making the decision. d. That pPublic testimony will be taken at the hearing.</p>

Page # & Comment	Language Changes
2-14	<p>2.15.190 Appeals of decisions. The decisions of the commission can be appealed to the city council. The commission shall have an opportunity to reconsider its decision when a petition for appeal is filed. The following procedure is established for an appeal of a commission decision:</p> <p>A. Parties Who Can Appeal. Any party appearing before the commission, either in written form or by oral testimony, and the city manager have the authority to appeal the decision of the commission.</p> <p>B. Petition for Appeal and Time of Filing. Any decision of the commission can be appealed to the city council if such appeal is made within 14 days of the date of the decision. Such appeal shall be made upon the petition prescribed form and approved by the commission stating the name of the party, indicating standing of party to appeal, demonstrating where the decision was in error, and what, if any, new evidence is available that was not available at the hearing.</p>
2-16	<p>2.15.240 Membership. A. The commission shall consist of seven members who are not officials or employees of the city and an two ex officio nonvoting members who one shall be the mayor and the second a student from one of the local high schools.</p>
2-16	<p>2.15.280 Staff services. The city planning director recorder shall provide a secretary to the commission and such other staff and consultation services as may be appropriate. The secretary shall keep a record of commission proceedings.</p>
2-17	<p>2.15.320 Conflict of interest. A member of the planning commission shall abide by and be in accordance with the state ethics code. not participate in any commission proceedings or actions in which any of the following has a direct or substantial interest: The member, or his or her spouse, brother, sister, child, parent, mother-in-law, father-in-law, any businesses in which he or she is then serving or has served within the previous two years or any business within which he or she is negotiating for or has any arrangement or understanding concerning prospective partnership or employment; any actual conflict of interest shall be disclosed at the meeting of the commission where the action is being taken.</p>
2-17	<p>2.15.340 Purpose. The city shall maintain a police department, as defined in ORS 181.610(812)(a), for the purpose of preventing crime, detecting crime, apprehending offenders, enforcing state criminal laws and city laws and ordinances, preserving the peace, protecting lives and property, and performing community caretaking functions, as defined in ORS 133.033.</p>
2-17	<p>2.15.350 Organization. A. The police department shall consist of such members, sworn and nonsworn, paid and volunteer, as the chief of police determines to be necessary to achieve its purpose under NMC 2.15.340, within the fiscal parameters and operating approval of the city manager and/or city council. B. Authority. 1. Sworn members of the department shall have all of the authorities granted to them and defined by law pursuant to ORS 181.610(812)(a), (14) and (17)(11) and ORS 133.005(3).</p>
2-17	<p>2.15.360 Chief of police – Position created and appointment. A. There is hereby created the position of chief of police, pursuant to Chapter II, Section 4(5), of the City Charter. B. Such chief of police which shall be appointed by the city manager, pursuant to Chapter VIII, Section 345(e)(4), of the City Charter.</p>

Page # & Comment	Language Changes
2-18	<p>2.15.370 Chief of police – Powers and duties generally. The powers and duties of the chief of police shall generally be as follows:</p> <p>A. Establish departmental objectives in line with city council goals. Plan and develop law enforcement policies, procedures, standards and programs based on an analysis of city growth, crime patterns, workload, staffing levels and related economic, legislative and judicial influences to provide appropriate and effective law enforcement services to the community.</p> <p>B. Have authority and responsibility for the fiscal management of the department, including developing justification for and presentation of department budget requests.</p> <ol style="list-style-type: none"> 1. Manage and monitor approved department budgets. 2. Prepare and/or review department requests for proposals. 3. Review, prepare, and approve department expenditures.
2-18	<p>Article V. Citizens’ Rate Review Committee 2.15.390 Established. There is established a citizens’ rate review committee (“committee”) for the city of Newberg, Oregon.</p>
2-18 The correct term for sewer is wastewater now.	<p>2.15.400 Powers and duties. The committee shall consider the rates for the city sewer wastewater and water systems, the amount of the storm water maintenance fee, and other rates and/or fees, at the request of and as assigned by the city of Newberg city council. The committee shall hold public hearings, make recommendations to the city council regarding the establishment of the rates and fees, reconsider rates and fees that are proposed to be established by the city council, when referred to them for reconsideration, and make other recommendations concerning the operation, maintenance and construction of the sewer wastewater and water systems, storm water system, and other systems of the city. Such recommendations shall be accompanied by statements of facts as a basis for such recommendation. The committee, once assigned the responsibility for reviewing the rates and fees, may structure the review process as necessary to offer a recommendation to the city council. The committee shall further have the powers and duties which may hereinafter be assigned to it by the city council.</p>
2-18	<p>2.15.420 Terms of office and appointment. A. Members of the committee shall be appointed by the mayor with the consent of the city council for a term of three years from the first calendar day of the year. The appointment of some members shall be, other than specified terms, in order to establish an approximately equal expiration of terms each year. All terms will expire as of December 31st of each year except for the first December 31st date following the original appointment of the committee. Members of the committee shall continue after expiration of their term until such time as their successors are appointed. The term of each member shall continue until such time as their successors are appointed.</p> <p>B. At the first meeting after the adoption of the ordinance codified in this article by the city council, the committee shall determine by vote the terms of the committee members. Three members shall serve for one year, two members for two years, and three members for three years. Committee members may be reappointed to serve a full three-year term or additional three-year terms without limit.</p>

Page # & Comment	Language Changes
2-20	<p>2.15.470 Authority. F. The committee, after due deliberation and consideration, shall set a date for a public hearing to receive input on the proposed rates and/or fees. The public hearing shall be held prior to a final recommendation to the city council on the rates and/or fees. The existing rates and/or fees and the new rates and/or fees shall be published in a newspaper and posted in three public places as part of the notice for the public hearing with the committee. The hearing shall consist of a presentation and explanation of the rates and/or fees by the city manager or a designee, and an opportunity for users or representatives of users to address the rates and/or fees or other items of concern with relation to the water system and/or sewer wastewater system and/or storm water system. A written and/or videotape record of the hearing shall be made and kept for review by the city council.</p>
2-20	<p>2.15.480 Appointments of boards, commissions, and committees. A. Appointments of members to boards, commissions, and committees are made by the mayor with the consent of the council pursuant to the city Charter, Section 9, entitled "Mayor."</p>
2-21	<p>2.20.010 Title. The title of this chapter shall be "personnel policies." [Ord. 2136, 11-21-83. Code 2001 § 33.01.]</p>
2-21	<p>2.20.030 Adoption and amendment of rules. A. The personnel rules and regulations shall be adopted by resolution of the council. All changes to the personnel rules and regulations shall also be adopted by resolution of the council. B. The personnel rules and regulations shall provide a means to recruit, select, develop and maintain an effective and responsive workforce and shall include policies and procedures for employee hiring, advancement training and career development, job classification, salary administration, retirement, fringe benefits, discipline, discharge and other related activities. C. All appointments and promotions shall be made in accordance with the personnel rules without regard to sex, race, age, disability, religion, ethnic background, national origin or political affiliation. [Res. 2638, 4-17-2006, Res. 97-2053, 6-2-97; Ord. 2136, 11-21-83. Code 2001 § 33.03.]</p>
2-22	<p>2.25.020 Retention of records. All records of the city shall be retained in accordance with the adopted Records Retention Schedule, except for videotape recordings, which shall be retained for two years.</p>
2-22	<p>2.25.030 Requirements for destruction. Notwithstanding anything hereinabove set forth, no records of the city shall be destroyed until the following requirements have been complied with, to-wit: A. An independent post-audit has been made covering the period to which the records pertain. B. The times given in the retention schedule have expired. C. Correspondence should be kept for the period prescribed for the item to which it relates. D. When possible, a small sampling or selection of records not kept permanently should be taken for permanent preservation before they are destroyed.</p>

Page # & Comment	Language Changes
2-22	<p>2.25.040 Certificate form.</p> <p>Whenever an officer of the city has accumulated records that have been retained beyond the period of time recommended in the retention schedule, that officer should describe and list them on a form which is prescribed by the city recorder and complies with all State laws. entitled "Certificate of Records Authorized to Be Destroyed." This certificate form should have the signed approval of the city recorder, after which the records described therein may be destroyed. The original form of this certificate must be filed permanently in the city recorder's office. and a copy retained permanently by the department using same. The certificate should be similar to the form illustrated below:</p> <p style="text-align: center;">CERTIFICATE OF RECORDS AUTHORIZED TO BE DESTROYED</p> <p>I do hereby certify that the records described below have been retained longer than required by ordinance and no longer have any particular value to the City of Newberg, Oregon: Certified to this _____ day of _____, 20__.</p> <p>_____</p> <p>Department Head Approved by: _____ City Recorder Approved by: _____ City Attorney</p>
2-25	<p>2.30.090 Jury list.</p> <p>A. In November of each year, the court clerk administrator or designee shall request a list of 300 names of registered voters electors, together with mailing labels, from the county clerk. The court clerk shall mail an explanatory letter and jury biography form to each potential juror. These forms shall be returned by the potential jurors by January 1st of the next calendar year. Jurors may request to be excused with explanation to the municipal court judge. Any nonexcused juror biographies shall be placed in a master notebook for use during the current calendar year.</p>
2-25	<p>2.30.150 Establishment, purpose and title.</p> <p>A. A procedure to handle violations of city ordinances as civil infractions, subject to the provisions set forth below, is hereby continued, pursuant to Sections 4, 5, 6 and 24 5, 6 and 36 of the City of Newberg Charter.</p>
2-28	<p>2.30.170 Infraction procedure.</p> <p>J. Hearing.</p> <ol style="list-style-type: none"> 1. Every hearing to determine whether an infraction has been committed shall be held before the municipal court without a jury. 2. The defendant may be represented by legal counsel, but legal counsel shall not be provided at public expense. If legal counsel is to appear, written notice shall be provided to the municipal court 10 days prior to the hearing date. 3. The defendant shall have the right to present evidence and witnesses in the defendant's favor, to cross-examine witnesses who testify against the defendant and to submit rebuttal evidence. 4. If the defendant alleged to have committed the infraction desires that witnesses be ordered to appear by subpoena, at the time the answer is returned, or subsequently by mail at any time at least 10 days prior to the scheduled hearing, a A deposit for each witness shall accompany the request. Such deposit Such deposit shall be refunded if no forfeiture is assessed by the final order. The deposit shall be in the amount equal to the witness fee in Circuit Court. Subject to the same 10-day limitation, the enforcement officer, the citizen who signed the complaint or the city attorney, as appropriate, may also request in writing that the court order certain witnesses to appear by subpoena. If a forfeiture is declared in the final order, the order shall also provide that the defendant shall pay any witness fees payable in connection with the hearing.

Page # & Comment	Language Changes
2-35	<p>2.35.020 Definitions.</p> <p>For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:</p> <p>“Conspiracy” means that term defined at ORS 161.450.</p> <p>“Controlled substances” means those terms defined in ORS 475.005, except that this shall not include less than one avoirdupois ounce of marijuana.</p> <p>“Deliver” or “delivery” means that term defined in ORS 475.005(8).</p> <p>“Facilitate” means that the property must have some substantial connection to, or be instrumental in, the commission of the underlying illegal activity which this article seeks to prevent.</p> <p>“Gambling” means that term defined in ORS 167.117.</p> <p>“Illegal activity” means:</p> <ol style="list-style-type: none"> 1. Gambling or promotion of gambling; or 2. The manufacture or delivery of controlled substances; or 3. The possession of controlled substances with the intent to distribute. <p>“Manufacture” means that term defined at ORS 475.005(15).</p> <p>“Marijuana” means that term defined at ORS 475.005(16).</p> <p>“Possession of controlled substances with the intent to distribute” means that term defined at 21 USC 841(a)(1).</p> <p>“Production” means that term defined at ORS 475.005(20).</p>
2-35	<p>2.35.030 Forfeiture.</p> <p>G. Real Property.</p> <ol style="list-style-type: none"> 1. All real property which is used to manufacture or deliver or distribute any controlled substance, or used to facilitate the promotion of gambling as defined in ORS 167.127 (1985 Edition).
2-35	<p>2.35.040 Seizure.</p> <p>Any property subject to forfeiture to the city under this article may be seized by any peace officer on behalf of the city without issuance of court process when:</p> <ol style="list-style-type: none"> A. The seizure is incident to an arrest or search under a search warrant or an inspection under an administrative search; or B. The property subject to seizure has been the subject of a prior judgment in favor of the city in a forfeiture proceeding under the ordinance; or C. A peace officer lawfully seizes the property under ORS 133.525 through 133.703 (1985 Edition) and has probable cause or is intended for use in or to facilitate illegal activity as defined by this article.
2-36	<p>2.35.060 Disposition of property.</p> <p>A. Prior to obtaining any forfeiture judgment, any money, securities and negotiable instruments that are not retained by the chief of police, sheriff, or other law enforcement agency for evidentiary purposes shall be held by the city recorder chief of police pending the outcome of the forfeiture proceedings.</p> <p>B. Seized property other than money, securities and negotiable instruments shall be kept in the custody of the city recorder chief of police for safekeeping until a forfeiture judgment is obtained.</p> <ol style="list-style-type: none"> 4. The city recorder chief of police shall give notice of the aforementioned public sale by posting written notice of the sale in three public places within the city at least 10 days before the sale. The notice shall describe the property and shall state the time and place of public sale at which the property may be purchased by the highest bidder, for cash. 5. The city recorder chief of police may deduct reasonable costs incurred in conducting the sale. The city recorder chief of police may also cancel the sale if the bids are deemed to be inadequate by the city recorder chief of police.

Page # & Comment	Language Changes
2-37	<p>2.35.100 Procedure.</p> <p>2. A copy of the notice shall be posted on the structure and a copy served on the owner(s) of record as indicated on the last equalized assessment of the tax rolls of the county in which the structure is located. Service shall be made either personally or by mailing a copy of the notice by registered or certified mail, postage prepaid, return receipt requested, to each owners person at his address as it appeared on the assessment roll, or as may otherwise be known to the chief of police. If no address appears or is known to the chief of police, then a copy of the notice shall be mailed first class, addressed to such person at the address of the structure believed to be the specified crime property. Furthermore, a copy of the notice shall be served on the occupant of the structure if that person is different than that listed on the tax rolls, either personally or by mailing a copy of the notice by first class mail, postage prepaid, to them at that structure.</p>
2-40	<p>2.35.220 Proceeds.</p> <p>The proceeds of such sale shall be first applied to the payment of the costs incurred in the seizing, keeping and making of such sale; and the balance, if any, shall be paid to the city manager, to be credited to the general fund.</p>

Page # & Comment	Language Changes
2-40	<p>2.35.230 Certificate of sale.</p> <p>A. Certificate of Sale. At the time of payment of the purchase price, the chief of police or his or her designee shall execute a certificate of sale, in duplicate, the original of which shall be delivered to the purchaser and a copy thereof filed with the recorder of the city. Such certificate of sale shall be upon a form approved by the City. in substantially the following form:</p> <p style="text-align: center;">CERTIFICATE OF SALE City of Newberg</p> <p>Date: _____ Purchaser: _____ Personal Property: _____ Purchase Price: \$ _____</p> <p>This is to certify that under the applicable provisions of Ordinance 1100, as amended, and pursuant to due notice of time and place of sale, the city did, on the day above, sell at public auction to the above purchaser who was the highest and best bidder, the above stated personal property for the purchase price indicated. In consideration of the purchase price, receipt whereof is hereby acknowledged, the city has this day delivered to said purchaser the foregoing property. The city assumes no responsibility as to the condition of title of the above described property. In case this sale shall, for any reason, be invalid, the liability of the city is limited to return of the purchase price.</p> <p>Dated this ___ day of _____, 20__.</p> <p>_____ Police Chief or Designee</p> <p>B. Certificate of Donation. At the time of donation, the police chief of police or his or her designee shall execute a certificate of donation, in duplicate, the original of which shall be delivered to the donee and a copy thereof filed with the recorder of the city. Said such certificate of donation shall be upon a form approved by the City. in substantially the following form:</p> <p style="text-align: center;">CERTIFICATE OF DONATION City of Newberg</p> <p>Date: _____ Donee: _____ Personal Property: _____ Purchase Price: \$ _____</p> <p>This is to certify that under the provisions of Ordinance No. 1100, as amended, the city did, on the day above stated, donate to the donee the above stated bicycle(s). The city has this day delivered to said donee the bicycle(s) listed above. The city assumes no responsibility as to the condition of title of the above listed bicycle(s). In case this donation shall, for any reason, be invalid, the city accepts no liability.</p> <p>Dated this ___ day of _____, 20__.</p> <p>_____ Police Chief or Designee</p>
2-42	<p>2.35.280 Authority.</p> <p>The city recorder finance director or designee shall provide a lien search system which complies with state law ORS 93.643 and 223.203.</p>

Page # & Comment	Language Changes
2-42	<p>2.35.290 Requests.</p> <p>B. A written application for a lien search shall contain a valid description of the property involved, including the Yamhill County tax lot number. Authorized companies may use the electronic system with prior approval from the city recorder finance director or designee. Authorized companies shall have a unique password obtained from the city.</p> <p>C. The city recorder finance director or designee shall issue a separate certificate and shall collect a separate fee for each parcel of land for which an application for certificate is made. Companies using the electronic system shall pay a separate fee for each property searched.</p>
2-42	<p>2.35.300 Fees.</p> <p>A. Before a certificate of a lien shall be issued, there shall first be paid to the city a fee as established by resolution.</p> <p>B. For lien searches performed through an online electronic medium, there shall be a fee charged per website hit, as established by resolution. The authorized companies shall be billed monthly. Failure to pay within 30 days will suspend the company's authority to use the electronic system until all past due bills are paid.</p> <p>Add Resolution reference to resolution table and note at end of section.</p>
3-3 & 3-4	<p>3.10.010 Definitions.</p> <p>"Occupancy" means the use or possession, or the right to use or possession, for lodging or sleeping purposes, of any room in a hotel, or space in a mobile home or trailer park or portion thereof.</p> <p>"Operator" means the person who is proprietor of a hotel and motel in any capacity and, where the operator performs his their functions through a managing agent other than an employee, the managing agent who shall have the same duties and liabilities as his their principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both.</p> <p>"Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.</p> <p>"Rent" means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, whether or not valued in money, without any deduction.</p> <p>"Rent package plan" means the consideration charged for both food and rent where a single rate is made for the total for both. The amount applicable to rent for determination of the transient room tax under NMC 3.10.020 shall be the same charge made for rent when not a part of a package plan.</p> <p>"Tax administrator" means the city manager finance director or designee of the city of Newberg.</p>
3-5	<p>3.10.060 Returns.</p> <p>A. The tax imposed by NMC 3.10.020 shall be paid by the transient to the operator when the transient pays rent to the operator. All such taxes collected by any operator are due and payable to the tax administrator on the fifteenth day of the month for the preceding quarter and are delinquent on the first day of the following month in which they are due.</p> <p>E. For good cause, the tax administrator may extend, not to exceed one month, the time for making any return or payment of tax. Any operator to whom an extension is granted shall pay interest at the rate of one-half of one percent per month or fraction thereof one per fraction of a month. If a return is not filed, the tax and interest shall become a part of the tax for computation of penalties prescribed in NMC 3.10.070.</p>
3-5	<p>3.10.070 Penalties and interest.</p> <p>B. Any operator who has not been granted an extension of time for remittance of tax due, and who fails to pay any delinquent remittance on or before a period of 30 days following the date on which the initial 10 percent penalty was first imposed shall pay an additional penalty of 15 percent of the amount of the tax due plus the amount of the tax and the 10 percent penalty already first imposed.</p>

Page # & Comment	Language Changes
3-7	<p>3.10.110 Lien.</p> <p>B. Any such lien as shown on the records of the city shall, upon the payment of the taxes, penalty and interest for which the lien has been imposed, be released by the tax administrator when their full amount has been paid to the city. The operator or person making the payment shall receive a receipt therefor stating that the full amount of the taxes, penalties, and interest have been paid and that the lien is thereby released and the record of lien satisfied.</p>
3-7	<p>3.10.120 Refunds.</p> <p>Whenever the amount of any tax imposed under NMC 3.10.020 has been paid more than once or has been erroneously or illegally collected or received by the tax administrator, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three years from the date of payment. The claim shall be made on forms provided by him the city. If he approves the claim is approved, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to the operator's him or his administrators, executors or assignees. All refunds shall be charged to the transient room tax fund.</p>
3-8 Please note the commas before & after normal bus. Hrs.	<p>3.10.140 Administration.</p> <p>A. Every operator shall keep guest records of room rentals and accounting books and records of the rentals. All these records he shall be retained for three years and six months after they come into being.</p> <p>B. The tax administrator or any person authorized in writing by him may examine, during normal business hours, the books, papers, and accounting records relating to room rentals of any operator liable for the tax, after notification to the operator him, and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid by him.</p>
3-9 to 3-11 ORS references not accurate. Research correct reference?? Benefited spelled wrong	<p>3.15.020 Definitions.</p> <p>“Capital improvement” means land, structures, or facilities, as that term is defined in ORS 288.805, machinery, equipment or furnishings having a useful life longer than one year.</p> <p>“Property benefitted” means all property specially benefitted by the improvement, the relative extent of such benefit to be determined by any just and reasonable method of apportionment of the actual cost of the improvement between the properties determined to be specially benefitted.</p> <p>2. If the owner of any land is unknown, the land may be assessed to “unknown owner(s).” If the property is correctly described, no final assessment shall be invalidated by a mistake in the name of the owner of the real property assessed or by the omissions of the name of the owner or the entry of the name other than that of the true owner. Where the name of the true owner, or the owner of record, of any parcel of real property is given, the final assessment shall not be held invalid on account of any error or irregularity in the description if the description would be sufficient in a deed of conveyance from the owner, or is such that, in a suit to enforce a contract to convey, employing such description, a court of equity would hold it to be good and sufficient.</p> <p>“Special benefit only to specific properties” means the same meaning as “special and peculiar benefit” as that term is used in Oregon law (ORS 223.389).</p>
3-12	<p>3.15.070 Public hearing and remonstrances.</p> <p>A public hearing before the council shall be held at the scheduled date and time and the council shall hear and consider objections and receive remonstrances to the local improvement. If those persons representing 60 percent or more of the proposed assessment within the district file with the city engineer a written objection or remonstrance against the proposed improvement, the remonstrance shall be a bar to any further proceedings in the making of such improvement of for a period of six months, except for a sidewalk or improvement unanimously declared by the council to be needed at once because of an emergency.</p>

Page # & Comment	Language Changes
3-13	<p>3.15.090 Call for bids.</p> <p>B. Low Bids. If all or part of the improvement is to be constructed by a contractor, the city shall call for bids for making the local improvements and award the bid to the lowest responsible bidder.</p> <p>H. Bond Required. The council shall require bonding of all contractors for the faithful performance of the contract. All bidders shall be required to submit a certified check or bid bond in an amount equal to five percent of their bid, and the contractor to whom the award is made shall submit a performance bond in the amount of his the awarded bid at the time the contract is awarded. All bonds shall be with bonding companies doing business in Oregon and given under Oregon law. Bonds shall incorporate the term of the plans and specifications and must be approved by the city attorney as to form.</p>
3-13 Benefited spelled wrong	<p>3.15.100 Assessment ordinance procedures.</p> <p>B. Notice. The city engineer shall prepare the assessment or estimated assessment for the properties benefitted and file it with the appropriate city office. Notice of such assessment or estimated assessment shall be given to each owner of the properties benefitted. The notice shall state the amount of the assessment or estimated assessment proposed for that property and set forth the date, time and place for a public hearing before the council for to hearing objections to the proposed assessments.</p>
3-14 to 3-15	<p>3.15.110 Lien recording – Payments over time or by cash.</p> <p>D. Time Payments. Within 10 days after notice of final assessment is mailed, the owner of any property to be assessed, at any time, may file a written application in at the finance department to pay:</p> <p>J. Description of Property. The application shall also contain a description, by lots or blocks, or other convenient description, of the property of the application assessed for the local improvement.</p> <p>M. Collection. The city may then immediately proceed to collect all unpaid amounts owing and enforce collection by any method authorized by law for the collection on of delinquent municipal liens.</p>
3-15	<p>3.15.120 Errors in assessment calculations.</p> <p>Claimed errors in the calculation of final assessments shall be called to the attention of the city manager prior to any payments on the account. The city manager shall check the calculation and report the findings to the council. If an error has been made, the city council shall amend the final assessment ordinance to correct the error. Upon the enactment of the amendment, the city manager shall make the necessary correction in the lien docket and shall send by registered or certified mail to the owner a corrected notice of the assessment.</p>
3-17 Insert an enter before “Increase the use”	<p>3.20.010 Definitions.</p> <p>“Public improvement” means the following:</p> <p>1. The design, construction, reconstruction or upgrading of any water, sanitary, sewer wastewater or storm water sewer system improvements;</p> <p>“Utilize” means to apply for a building or other permit which shall use or increase the use of an advance financed public improvement, to connect to an advance financed public improvement, or to otherwise increase the use of an advance financed public improvement.</p> <p>“Increase the use” means:</p> <p>1. For sanitary sewer wastewater or storm water sewer lines, to make a physical change requiring a building or development permit on the intervening property which increases the volume discharged into the line.</p>

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3-18	<p>3.20.030 Advance financing report. Upon receipt of the advance financing application, the city manager shall make an analysis of the advance financing proposal and shall prepare a report to be submitted to the city council for review, discussion and public hearing. Such report shall include a map showing the location and front footage of the development and intervening property. The report shall also include the city engineer’s analysis of whether or not the submitted costs, by using the “standard engineering practices” method, of the public improvements s are is reasonable and the estimated advance finance reimbursement due from each intervening property owner.</p>
3-18	<p>3.20.050 Notification. Not less than 10 days days nor more than 30 days prior to any public hearing being held pursuant to this chapter, the developer, all intervening property owners, and all potential intervening property owners shall be notified of such hearing and the purpose thereof. Such notification shall be accomplished by mail, and notice shall be made on the date that the letter of notification is posted. Failure of any owner to be so notified shall not invalidate or otherwise affect any advance financing resolution or the city council’s action to approve or not approve the same.</p>
3-18	<p>3.20.060 Advance financing resolutions and agreements. A. Resolution. After the public hearing held pursuant to NMC 3.20.040, if the city council desires to proceed with advance financed public improvements, it shall pass an advance financed resolution accordingly. The resolution shall: 1. Designate the proposed public improvement as an advance financed improvement and set forth the final cost if the final cost is known; 4. Acknowledge any payment by an intervening property owner or an agreement between the intervening property owner and the developer if known to the city; 5. If the developer is not the city, instruct the city manager to enter into an agreement between the developer and the city pertaining to the advance financed improvement, requiring such guarantee or guarantees, as the city deems best to protect the public and intervening property owner; and</p>
3-26	<p>3.25.070 Process for approval of special solicitation methods and exemptions. B. Basis for Approval. The approval of a special solicitation method or exemption from competition must be based upon a record before the city council that contains the following: 6. The estimated date by which it would be necessary to sign let the contract(s).</p>
5-1	<p>TITLE 5 BUSINESS LICENSES AND REGULATIONS</p> <p>Chapters: <u>5.05</u> Business Licenses <u>5.10</u> Exhibitors <u>5.1530</u> Cable Communications <u>5.2015</u> Temporary Sales <u>5.2520</u> Cigarette Vending Machines <u>5.3025</u> Dances</p>

Page # & Comment	Language Changes
5-3	<p>5.05.030 Basic fees. A. Fee Amount. 1. There is imposed upon the business trades, shops, professions, callings and occupations specified in this chapter a basic license fee of \$50.00, and it shall be unlawful for any person to transact and carry on any such business in the city without first having obtained the license therefor for the current calendar year as herein provided or complied with any and all application provisions of this chapter. C. Fee Due Date. Business license fees are due and payable upon expiration of a previously issued license, or for new businesses upon the first day any trades, shops, professions, callings and occupations trade, shop business, occupation, or profession is conducted within the city.</p>
5-4	<p>5.05.070 Procedure for obtaining licenses. A. Issuance. 1. All licenses shall be issued by the city, upon written application therefor, and not otherwise. 2. All licenses and permits are subject to revocation at any time by the city council for cause. B. Application. The application for such license shall contain the following information: 1. A description of the trades, shops, professions, callings and occupations trade, shop, business, profession, occupation or calling to be carried on within the city;</p>
5-5	<p>5.05.080 Violation and penalty. A. Unlawful Acts. It is unlawful for any person to willfully to make any false or misleading statement on the application to the city recorder for the purpose of determining the amount of any license fee herein provided to be paid by any such person, or to fail or refuse to comply with any of the provisions of this chapter to be complied with or observed by such person, or to fail or refuse to pay before the same shall be delinquent any license fee or penalty required to be paid by any such person. B. Failure to Obtain License. In the event any person required to obtain a license shall fail or neglect to obtain the same before it shall become delinquent, the city recorder shall collect upon the license fee in addition to payment therefor and, in addition, thereto a penalty of five percent of the fee therefor for each calendar month or fraction thereof the same shall be delinquent.</p>
5-6	<p>5.10.020 License required and application. All exhibitors as defined in NMC 5.10.010 shall obtain a license from the city prior to engaging in any activities defined in NMC 5.10.010. Application for the license shall be filed with the city of Newberg together with a nonrefundable application and license fee in an amount set by council resolution. Said application shall be upon a form approved by the city manager.</p>
5-6 Remove the hyphen on city owned	<p>5.10.030 License approval procedure and license term. The city shall submit the application for an exhibitors license to affected city department heads for their approval and comment and upon determining that the exhibitor has obtained written approval for the establishment and setup of the his exhibition on private or public property from the owner of said property; that the location of exhibitor's activity does not impair the proper flow of traffic on public or private property, nor unduly restrict parking spaces on public or private property and provides for bathroom facilities either from a permanent or portable system. The city shall issue a license for a period not to exceed 14 days from the date of issuance. No license for an exhibitor's activities upon city owned city-owned property shall be authorized without the written consent of the city manager or, in the absence of the manager, the mayor. Such approval by the city manager or mayor for activities upon city owned city-owned property may be conditioned by the city manager or mayor as the public interest dictates.</p>

Page # & Comment	Language Changes
5-10	<p>5.15.030 Permits and construction. E. Poles, Conduits and Other Facilities. 1. The grantee shall utilize existing poles, conduits, and other facilities whenever possible and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately owned property unless and until first securing the written approval of the city's director of public works.</p>
5-18	<p>5.15.140 Limitations of franchise. G. Pole or Conduit Use. 2. Whenever in the judgment of the grantor it is deemed impracticable to permit erection of poles or construction of underground conduit system by any other utility which may at the time have authority to construct or maintain a conduit or poles in street area, the grantor may require the grantee herein to afford to such utility the right to use such of the poles or facilities of the grantee as the grantor finds practicable in common with the grantee, both parties sharing the costs incident thereto and under such rules and regulations as they may agree upon, but in case they fail to agree within a reasonable time, then upon such terms, conditions and regulations governing the same as the grantor may determine to be just and reasonable.</p>
5-25 to 5-26	<p>5.15.230 Systems design, construction and technical performance standards. H. No newly constructed system services shall be offered for sale prior to proof-of-performance testing in accordance with FCC Part 76.601 and technical specifications and standards listed in the franchise ordinance. This initial proof-of-performance testing, and annual proof-of-performance testing, may be conducted by the city, or its designated representative, at the city's option, when for sufficient cause is as deemed by the council, or its designated representative. The city reserves the right to have the measurements, associated with city-observed performance tests, conducted at city-selected test points and to a greater number of test points than the minimum required by Subpart 76.601, FCC Rules. Additionally, the grantee shall reimburse the city for all expenses incurred by it in connection with the city conducting or observing the annual performance tests, when the results of those tests are deemed by the city to fall below a 90 percent level of compliance with the technical standards set forth in FCC Part 76 and in the franchise ordinance. N. The grantee's corrective maintenance program shall render efficient corrective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions shall be preceded preceded by notice and shall occur during a period of minimum use of the system. A written log shall be maintained of all service interruptions. The log shall reflect the date, time, duration, and reason for each service interruption. The record of the log shall be kept on file by the grantee for a minimum of three years.</p>
5-34	<p>5.20.030 Requirements. C. Cleanup Bond. A refundable cash bond in an amount to be set by resolution of the city council shall be submitted to ensure the cleanup of the site after the completion of the sale of the trees. The refundable bond will only be returned after evidence has been submitted by the applicant indicating that the site and surrounding area are clean. Cleanup shall also include the nearby public streets which may have been tracked with mud, dirt, or debris as a result of the holiday tree operation. If the site is not cleaned up by February 1st, or the applicant has not submitted adequate proof that the site is clean, the director is authorized to expend an amount necessary to clean up the site. If this exceeds \$200.00, the city director may bill the owner of the property for the remainder. F. Conditions. The city director may add reasonable conditions to the permit to ensure that the intent and provisions of this article are properly implemented.</p>

Page # & Comment	Language Changes
5-34	<p>5.20.050 Definitions. "Solicitor" means a person or persons who travel from place to place not carrying goods, but taking orders for future delivery, or soliciting for money or other things of value. The term "solicitor" does not include a person who was has been specifically invited to a customer's residence or business location, or a nonprofit organization as organized under the Internal Revenue Service Code.</p>
5-38	<p>5.25.030 License application. A. Any person desiring to maintain, keep and/or display any such automatic cigarette vending machine shall first make and file with the city recorder a written application for a license so to do the same. D. Whereupon, the city recorder shall issue the license as herein provided, if the application otherwise complies with the requirements of this chapter.</p>
6-3	<p>6.05.030 Livestock and poultry prohibited. It shall be unlawful for any person, firm, corporation or association to keep or maintain within the corporate limits of the city any livestock or poultry, except for household pets, without first obtaining a permit to do so, and no permit shall be granted without the approval of the Animal Control Officer and no permit as hereinafter provided shall be granted therefor. Penalty: See NMC 6.10.120.</p>
6-3	<p>6.05.040 Wild or domestic animals and fowl. It shall be unlawful for any person, firm, corporation or association to keep or maintain within the corporate limits of the city any wild or domestic fowl of any kind or description, or to keep or maintain any wild or domestic animals of any kind or description, cats and dogs excepted, or to keep or maintain any honeybees without first having obtained a permit therefor from the police department recorder of the city.</p>
6-3	<p>6.05.050 Permit for certain animals and fowl. Any person, firm, corporation or association desiring to keep or maintain within the corporate limits of the city any wild or domestic fowl, wild or domestic animals, cats and dogs excepted, or any honeybees, shall apply for a permit from the police department recorder of the city, who shall make an investigation and issue the said permit if he shall determined that the same should be granted. Any permit issued as herein provided may be revoked at any time, either by the police department recorder or by the city council, whenever it shall be made to appear that the maintenance of said fowl, animals or bees interferes with the rights of others in the enjoyment of their property, peace, health and safety.</p>
6-4	<p>6.05.100 Livestock and poultry. Except for household pets and as otherwise permitted by this chapter, no person shall keep or maintain livestock or poultry within the city. [Ord. 1690, 3-19-73. Code 2001 § 92.10.] Penalty: See NMC 6.10.120.</p>
6-4	<p>6.05.110 Removal of carcasses. No person shall permit an animal carcass owned or controlled by him to remain upon public property, or to be exposed on private property, for a period of time no longer than five days is necessary to remove and dispose of the carcass.</p>
8-4	<p>8.05.080 Procedures to be used in taking custody, removing, and disposing of discarded vehicles. A. The procedure set forth in ORS 819.090100 through 819.2670 may be used for the taking custody, removing, and disposing of discarded vehicles upon any public right-of-way, city street, alley, road, or highway within the city, and public property.</p>
8-5	<p>8.10.020 General system requirements. A. No alarm system shall be installed, used, or maintained in violation of any of the requirements of adopted provisions of the Uniform International Fire Code or of any applicable statute, law, or administrative regulation of the state or of the city.</p>

Page # & Comment	Language Changes
8-8	<p>8.15.010 Definitions.</p> <p>For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:</p> <p>“Person” means a natural person, firm, partnership, association or corporation.</p> <p>“Person in charge of property” means an owner, an agent, occupant, lessee, contract purchaser, or other person having possession or control of property or the supervision of a construction project.</p> <p>“Person Responsible” T means the person responsible for abating a nuisance shall include:</p>
8-9	<p>8.15.050 Junk accumulation.</p> <p>It shall be unlawful for any person to accumulate or permit the accumulation on any open lot or other premises of any lumber, boxes, barrels, bricks, stones, scrap metal, motor vehicle bodies or parts, or similar materials, rubbish or any articles of junk which could provide rat harborage, unless the same shall be placed on open racks that are elevated not less than three inches above the ground and shall be evenly piled or stacked.</p> <p>Penalty: See NMC 8.15.260</p>
8-12	<p>8.15.150 Unnecessary noise – Permitted exceptions.</p> <p>A. Unreasonable Noise and Exceptions.</p> <p>3. The following acts are declared to be per se violations of this section. This enumeration does not constitute an exclusive list:</p> <p style="padding-left: 40px;">j. Construction or Repair of Buildings, or Excavation of Streets and Highways. The construction, demolition, alteration or repair of any building or the excavation of streets and highways other than between the hours of 7:00 a.m. and 7:00 p.m., on weekdays. In cases of emergency, construction or repair noises are exempt from this provision. In nonemergency situations, the city manager may issue a permit, upon application, if the city manager determines that the public health and safety, as affected by loud and raucous noise caused by construction or repair of buildings or excavation of streets and highways between the hours of 7:00 p.m. and 7:00 a.m. will not be impaired, and if the city manager further determines that loss or inconvenience would otherwise result. The permit shall grant permission in nonemergency cases for a period of not more than three days. The permit may be renewed once for a period of three days or less.</p> <p>C. Permitted Exceptions.</p> <p>1. Upon application to the city manager, a permit may be granted by the city manager for events held during the Old Fashioned Festival. Such permit may be exempt from the noise requirements of this chapter and any or all official event activities, provided they do not disrupt emergency service communications. “Disruption of emergency service communications” is defined as any noise so loud as to be audible from within the public safety answering point (PSAP), and which is distracting or disrupting to emergency communications personnel. Further, all noise shall be restricted between the hours of 11:00 p.m. and 7:00 a.m., if such noise disturbs adjacent occupants in a residential area.</p> <p>3. Upon application to the city manager, permits may be granted by the city manager to responsible persons or organizations for the broadcast or amplification of programs of music, news, speeches or general entertainment as a part of a national, state or city event, public festivals, or outstanding events of a noncommercial nature. The broadcast or amplification shall not be audible for a distance of more than 200 feet from the instrument, speaker or amplifier; and in no event shall a permit be granted where an obstruction to the free and uninterrupted traffic, both vehicular and pedestrian, will result. Further, such amplification or broadcast shall be restricted between the hours of 10:00 p.m. and 7:00 a.m. if such noise disturbs adjacent occupants in a residential area.</p>

Page # & Comment	Language Changes
8-14	<p>8.15.160 Unlawful businesses. A. It is a public nuisance for any person in charge of property to permit or any person to cause to exist any place or business where patrons, employees, residents or occupants engage in a pattern of behavior in the neighborhood involving the commission of three or more of the following offenses: 1. Public drinking of alcohol as defined by ORS 430.325 titled Prohibitions on local governments as to certain crimes and/or public intoxication, as defined by NMC 9.05.060.</p>
8-15	<p>8.15.180 Definitions. For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning: "Enforcement officer" means the city manager or any designee or designees whom the city manager appoints by executive order or rule to enforce this chapter.</p>
8-16 Changed for consistency with 8.20.040	<p>8.15.210 Abatement by city. C. The enforcement officer shall keep an accurate record of the expense incurred by the city in physically abating the nuisance, and shall include therein a charge of 1525 percent of the expense for administration overhead.</p>
8-17	<p>Chapter 8.20 OBNOXIOUS VEGETATION/FIRE HAZARD WEEDS AND TREES</p>
9-9	<p>9.20.020 Children confined in vehicles. A. No person who has under his their control or guidance a child under ten eight years of age shall lock or confine, or leave the child unattended, or permit the child to be locked or confined or left unattended in a vehicle for a period of time longer than 15 consecutive minutes or such a period of time as may be likely to endanger the health or welfare of such child.</p>
9-10	<p>9.20.070 Failing to supervise a child. A. A person commits the offense of failing to supervise a child if the person is a custodial parent, or the parent having physical custody at the time the child commits the act, lawful guardian, or other person lawfully charged by a court of competent jurisdiction with the care or custody of a child under 18 years of age, and the child: 1. Violates NMC 9.20.040 Curfew;</p>

Page # & Comment	Language Changes
9-15 to 9-16	<p>9.25.170 Clearing of litter from private premises and adjacent public places by city.</p> <p>A. Notice to Remove. The chief of police or designee is and the city recorder are hereby authorized and empowered to notify the owner, his agent, or person in control of any private premises within the city to dispose of litter on such premises or upon the public places abutting or adjacent to such premises. Such notices shall be given by posting the private premises and by certified mail addressed to said owner, his agent, or such other person's at his last known address, or by personal service on the owner, agent, or person in control or occupant of said property.</p> <p>B. Content of Notice. The notice shall describe the work to be done and shall state that if the work is not commenced within five days after receipt of notice and diligently prosecuted to completion without interruption, the city shall dispose of the litter, and the cost thereof shall be a lien on the property. Said notice shall be upon a form approved by the City. The notice shall be substantially in the following form:</p> <p style="text-align: center;">NOTICE TO REMOVE LITTER</p> <p>The owner of the property described as follows: _____ commonly known as _____ is hereby ordered to properly dispose of the litter located on said property, to-wit: _____ within five days from the date hereof. If the disposal of the litter herein indicated is not commenced and diligently prosecuted to completion within the time fixed herein, the city shall cause such disposal to be done; and the cost thereof, including any incidental expenses, will be made a lien upon said property.</p> <p>C. City Recorder to Keep Record. The city recorder shall cause to be kept in his office a permanent record containing:</p> <ol style="list-style-type: none"> 1. A description of each parcel of property for which notice to dispose of litter has been given; 2. The name of the owner, if known; 3. The date on which such notice was mailed and posted; 4. The charges incurred by the city in disposing of the litter, and all incidental expenses in connection therewith; and 5. A brief summary of the work performed. Each such entry shall be made as soon as practicable after completion of such act. <p>D. Action upon Noncompliance. Upon the failure, neglect or refusal of any owner or agent so notified to properly dispose of the litter within five days after notice has been given as hereinbefore provided, or within 10 days after the date of mailing such notice, in the event the Post Office Department is unable to make delivery thereof, provided the same was properly addressed to the last known address of such owner or agent, the city recorder hereby is authorized and empowered to pay for the disposal of such litter out of the city funds or to order its disposal by city forces. The chief of police or designee and his authorized representatives, including any contractor with whom he the city contracts hereunder, and assistants, employees or agents of such contractor, hereby are authorized to enter upon said property for the purpose of disposing of the litter described in the notice. Before the chief of police or designee or contractor arrives, any property owner may dispose of the litter at his the property owner's own expense.</p> <p>F. Recorded Statement Constitutes a Lien. Where the full amount due the city is not paid by such owner within 30 days after the date of said billing by the city recorder, he-it shall cause to be recorded a sworn or certified statement showing the cost and expense incurred for the work, the date the work was done, and the location of the property on which said litter disposal work was done. The recordation of such sworn or certified statement shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection, until final payment has been made. Said costs and expenses shall be subject to a delinquent penalty of 10 percent in the event same is not paid in full on or before the date the amount due becomes a lien. Sworn or certified statements recorded in accordance with the provisions hereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily and shall be full notice to every person concerned that the amount of the statement, plus interest and costs, constitutes a charge against the property designated or described in the statement, and that the same is due and collectible as provided by law. The city recorder shall record said lien in the city lien docket.</p>
9-20	<p>9.35.060 Minors not permitted to drink or loiter on licensed premises.</p> <p>A. Except as provided in NMC 9.35.070, no minor, whether or not accompanied by a parent or other responsible relative, shall enter, loiter or remain on any licensed premises, or any portion thereof, which has been posted by the Commission to prohibit use by minors.</p>

Page # & Comment	Language Changes
9-21	<p>9.35.130 Lawful hours of sale.</p> <p>A. Subject to the provisions of subsection (B) of this section, no person shall sell, dispense or allow the consumption of any alcoholic liquor on any licensed premises, nor shall any licensee, or employee or agent thereof, deliver or permit the removal of any alcoholic liquor to, on or from any licensed premises between the hours of 12:00 2:00 a.m. and 7:00 a.m.</p>
10-4	<p>10.05.070 Public danger.</p> <p>Under conditions constituting a danger to the public, the chief of police or designee his designate may install temporary traffic control devices deemed by him to be necessary.</p>
10-7	<p>10.10.100 Load limitations on certain streets.</p> <p>B. Upon those streets designated in the following truck route:</p> <p>1. From the intersection of West Second Street with Main Street easterly along Second Street to South River Street; from the intersection of West Third Street with Highway 99 West easterly along West Third Street to South Main Street; from the intersection of South College Street with East First Street southerly to East Fourth Street; from the intersection of South College Street with East Fourth Street easterly along East Fourth Street to Wyooski Street; from the intersection of East Fourth Street southeasterly along Wyooski Street to the intersection of Wyooski Street with East Eleventh Street; from the intersection of East Eleventh Street with Wyooski Street westerly along East Eleventh Street to South River Street; from the intersection of South River Street with East First Street southerly on River Street to Fourth Street; from the intersection of First Street with Main Street southerly on Main Street to Third Street; from the intersection of South River Street with East Eleventh Street southerly along South River Street to the south city limits; from the intersection of East Illinois Street with North Main Street easterly on East Illinois Street to North College Street; from the intersection of Springbrook Street Road and the south city limits northerly along Springbrook Street Road to the Southern Pacific railroad tracks; and from the intersection of Springbrook Street Road and Crestview Drive westerly along Crestview Drive to the westernmost limits of the A-decDEC Industrial Park.</p>
10-10	<p>10.15.020 Prohibited parking and standing.</p> <p>A. Certain sections of the Oregon Vehicle Code, ORS 811.550 through 811.585, and ORS 811.615 are hereby adopted by the city, and any violation of these provisions of the Oregon Revised Statutes shall be an offense enforceable pursuant to uniform civil infraction procedures for violations of ordinances. In addition to these provisions of the Oregon Vehicle Code dealing with parking, stopping and standing, no person shall park or stand:</p> <p>3. A motor truck, as defined by ORS 801.355, or a truck tractor, as defined by ORS 801.575, or a truck trailer as defined by ORS 801.580, on a street between the hours of 9:00 p.m. and 7:00 a.m. of the following day in front of or adjacent to a residence, motel, apartment house, hotel or other sleeping accommodation unless a revocable permit for a motor truck or a truck tractor (not a truck trailer) is obtained from the city police department. The permit is only applicable to a motor truck or a truck tractor. A truck trailer is not eligible for a permit. The permit application shall be approved by the city manager. The permit shall be for a 12-month period and may be renewed. In the event any complaint(s) is received from a resident or residents in the area of the parked truck or tractor, the city shall notify the permit holder of such complaints, give the permit holder a chance to respond to such complaints and after taking into consideration the complaints and response, the city manager may revoke said permit. Such decision to revoke the permit by the city manager may be appealed within 10 days to the city council. During such appeal the permit shall remain revoked.</p>

Page # & Comment	Language Changes
10-11 This change is to keep with current practice	10.15.030 Storage of motor vehicles on street. No person shall store or permit to be stored on a street or other public property, without the permission of the council chief of police , a motor vehicle or personal property for a period in excess of 72 hours. It shall constitute prima facie evidence of storage and abandonment of a motor vehicle if the same is not moved for a period of 72 hours. In addition to the citation for an ordinance violation, the city may use the provisions of ORS <u>819.100</u> in following the procedure to remove a vehicle after due notice as provided in statute when a vehicle is in violation of this section.
10-12	10.15.040 Use of loading zones. C. Within the Commercial Area. The following policy is adopted to govern the establishment of loading zones within the commercial area between Main Street and River Street in the city: 8. All applications for a loading zone within the commercial area shall be referred to the police committee. a. The police committee Traffic Safety Commission shall have the authority to establish, maintain, remove or alter the loading zone within the commercial area. b. Upon approval of an application, the committee shall advise the city manager of the location, size and other limitations for the loading zone. 9. A permit fee in the amount of \$75.00 shall be charged for each loading zone up to 22 feet, with an additional permit fee being charged for any loading zone over 22 feet. 10. Upon the applicant's termination of a business at the location, the permit will be rescinded. a. However, the new owner may apply for a loading zone at the same location within 10 days. b. The permit fee for the new owner shall be \$25.00. 11. Schedule. a. The city manager shall compile a schedule of the loading zones established within the commercial area. b. The schedule shall be entitled, "Loading Zones within the Commercial Area."
10-14	10.15.160 Citation and illegally parked vehicle. Whenever a vehicle without an operator is found parked in violation of a restriction imposed by this chapter, the officer finding the vehicle shall take its license number and any other information displayed on the vehicle which may identify its owner, and shall conspicuously affix to the vehicle a traffic citation for the operator to answer to the charge against him or pay the penalty imposed within five days during the hours and at a place specified in the citation.
12-3	12.05.020 Permits. A. Any person who may desire to construct or is required by the city engineer to construct any sidewalk or curb upon public property in the city shall, before commencing work thereon , apply to the city engineer for a permit therefor ; and such application shall specify the property along which such walk or curb is to be laid, the name of the person for whom same is to be constructed, by whom the same is to be done, and the time within which same is to be completed.
12-3	12.05.030 Records and reports. The city engineer shall keep a permanent record of all permits that are issued under and by virtue of this chapter, and shall, once in each month, make a written report to the council, which report shall contain all the information contained in said record.

Page # & Comment	Language Changes
12-4	<p>12.05.050 Notice.</p> <p>If the owner of any such land adjoining any street in the city shall fail to have and keep in good repair the sidewalk and/or curb in front of, along and abutting upon such land and/or where no sidewalk or curb exists and in the opinion of the city engineer a sidewalk and/or curb or both is needed, the city engineer shall post a notice of such land describing the sidewalk to be constructed, repaired or reconstructed by termini or otherwise and directing such owner, owner's or his agent or the occupant of such land to immediately construct, reconstruct or repair such sidewalk in a good and substantial manner and in accordance with the provisions of this chapter. Such notice shall describe such land by street number or otherwise shall state the date of posting same, shall require such owner, occupant or agent to complete such construction, reconstruction and/or repair within 90 days after such date of posting and shall state that a lien may be levied and assessed upon such land for the cost of the construction, reconstruction and/or repair of such sidewalk and that such owner, occupant or agent may be subjected to the penalties provided by this chapter in the event of failure to so construct, reconstruct and/or repair said sidewalk within the time specified by said notice. Said notice shall also set forth the provisions of NMC 12.05.080 as amended. The city engineer shall file with the city reorder an affidavit of posting such notice stating the date and place of such posting and said recorder shall upon receiving such affidavit of posting send a similar notice by mail to the owner of such land if known or to the agent of such owner if known, directed to the last known post office address of such owner or agent or, if no address is known, then such notice shall be mailed to Newberg, Oregon. A mistake in the name of the owner or agent or a name other than that of the true owner or agent of such property shall not render void such notice but in such case, the posted notice shall be sufficient.</p>
12-5	<p>12.05.090 Permits and certificates.</p> <p>A. Concurrent with the issuance of a building permit for the construction of a building for residential use or business structures or an addition to a dwelling or business structure, the value of which is \$5,000 \$30,000 or more except as the city engineer may require on building permits of lesser value in accordance with NMC 12.05.040, the owner, builder or contractor to whom the building permit is issued shall meet the following requirements:</p>
12-5	<p>12.05.100 Closing of streets during construction.</p> <p>Whenever new construction work or repair work is underway upon a street or part of a street, the contractor or person directly in charge of the construction or repair work shall obtain a permit; With the consent of the chief of police, may close the street may be closed, by reason that the street it, by the construction work or repair work, is made dangerous for public traffic due to the work. He The chief of police may also close the street or part of a street to public traffic, whenever such closing is necessary to properly carry on the work of construction or repair; and the street or part of a street shall remain closed during the period of work.</p>
12-6	<p>12.05.130 Permit.</p> <p>No corporation, by its servants or agents, and no person or persons shall make an excavation in or dig up any public street, alley, highway or other public place within the corporate limits of the city for any purpose whatsoever without having first obtained a permit in writing for such purpose from the superintendent of public works of the city engineer.</p>
12-8	<p>12.05.210 Structures placed on streets.</p> <p>It shall be unlawful for any person, firm, association, or corporation to place or maintain any structure of any nature whatsoever in any right-of-way of the street or alley within the corporate limits of the city or to cause any structure to be placed therein without first obtaining a permit, from the city, to do so.</p>

Page # & Comment	Language Changes
12-8	<p>12.05.220 Construction. Whenever during the course of the construction of any building or otherwise it shall become necessary for construction purposes or otherwise to use all or a part of said public street or alley adjoining said real property for said purposes, the contractor, owner, or person causing said public street or alley, or both, to be so used shall obtain a permit, from the city, authorizing him to do so.</p>
12-8	<p>12.05.230 Merchandise on sidewalks or parking strips. It shall be unlawful for any person, firm, or corporation to use either the sidewalks, or the land lying between the sidewalk line and the curb line known as a parking strip, for the purpose of displaying or storing wares, goods, or merchandise, or for any other commercial or other purposes without first obtaining a permit, from the city, to do so.</p>
12-8	<p>12.05.240 Permits. The city manager planning and building director or designee is authorized to issue a permit for the use of public right-of-way to place and maintain structures, for construction activities required to construct structures on private property, and for allowing merchandise on the sidewalk or parking strip with certain conditions as listed below: A. That the permit may be revoked at any time by the city manager planning and building director or designee;</p>
12-9	<p>12.05.260 Tree removal and pruning. D. No person shall top or severely prune a tree greater than two inches in diameter in the right-of-way without first obtaining a permit from the city to do so, except where such pruning is required by city ordinances or requested by the city, such as to maintain clearances from sidewalks, street signs, streets, or alleys. "Severe pruning" is defined as severing the trunk, or cutting back the trunk or a limb larger than four inches in diameter to a stub. The designated staff person may issue a permit to prune a tree, to remove trees, limbs or roots which are dead, to remove trees, limbs or roots which have been severely damaged by storms or other causes or which otherwise pose a danger to the public health, safety or general welfare, to alter the shape of trees located under utility wires or other obstructions where other pruning practices are impractical, or to maintain the health and overall attractive shape of the tree. The designated staff person may require that the pruning be done by or under supervision of a certified arborist.</p>
13-5	<p>13.05.120 Exemptions. B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code current Oregon Residential Specialty Code, are exempt from all portions of the system development charge.</p>
13-6	<p>13.05.160 Prohibited connection. No person may shall connect to the water or sewer wastewater systems of the city unless the appropriate system development charge has been paid or installment payment method has been applied for and approved.</p>
13-6	<p>13.05.170 Penalty. Violation of § 50.30 13.05.160 of this chapter is punishable by a fine not to exceed \$500.00.</p>
13-7	<p>Chapter 13.10 WASTEWATERSEWERS</p>

Page # & Comment	Language Changes
13-7 to 13-8 A starts on 13-8, which causes an awkward break from the previous paragraph on pg 13-7. A needs to go on the same page as the first paragraph	13.10.020 Purpose and policy. This chapter sets forth uniform requirements for users of the publicly owned treatment works (POTW) for the city of Newberg and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403). The objectives of this chapter are: A. To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;
13-15	13.10.040 Definitions. "Upset" means an exceptional incident in which a user unintentionally and temporarily is in a state of noncompliance with the discharge requirements set forth in this chapter due to factors beyond the reasonable control of the user; and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities , lack of preventative maintenance, or careless or improper operation thereof.
13-18	13.10.070 Sewer Wastewater connection procedures. G. Design/Construction Standards. Plans for all public and private sewerwastewater systems shall be reviewed and approved by the director prior to construction. The plans shall conform to the requirements of the State Department of Environment Quality, as well as city standards prescribed by the director . All public and commonly maintained private sewerwastewater systems shall be designed by a registered professional engineer. Although specific standards may apply in individual cases, general city standards are summarized below:
13-23	13.10.090 Specific discharge limitations. B. Limitations on Specific Materials. In addition to categorical pretreatment standards referenced in subsection (A) of this section, no discharger shall discharge wastewater containing concentrations (and/or mass limitations) of substances exceeding those local limits established pursuant to resolution of the city council. The city shall revise from time to time standards for specific restricted substances. These standards shall be developed in accordance with 40 CFR, Section 403.5, and shall implement the objectives of this chapter. Standards adopted in accordance with this section will be deemed pretreatment standards for the purposes of Section 307(d) of the Act. These limitations are meant to apply to significant industrial users only. The superintendent or director city engineer may impose mass limitations in addition to, or in place of, the concentration-based limits. Where an industrial user is subject to a categorical pretreatment standard and a local limit for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply. The city may develop best management practices (BMPs) in lieu of numerical limitations.
13-26	13.10.100 Federal categorical pretreatment standards. D. Reports on Compliance with Categorical Pretreatment Standards. 2. This report shall be completed in compliance with the specific requirements of Section 403.12(c) of the General Pretreatment Regulation for Existing and New Sources (40 CFR Part 403) promulgated by the Environmental Protection Agency on January 28, 1981, or any subsequent revisions thereto .

Page # & Comment	Language Changes
13-29	<p>13.10.110 Pretreatment requirements. F. Additional Pretreatment. 6. The director may also require (a) the installation of technology required to meet applicable pretreatment standards and requirements and (b) the submission of all notices and self-monitoring reports from industrial users as are necessary to assess and assure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in this chapter § 403.12.</p>
13-30	<p>13.10.130 Requirements for a permit. No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the director. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this chapter and subjects the wastewater discharge permittee to the sanctions set forth in this chapter. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state, and local law. The director may require other users, including haulers and or of liquid waste, to obtain wastewater discharge permits (as necessary) to carry out the purposes of this chapter.</p>
13-32	<p>13.10.160 Permit issuance and conditions. B. Conditions of Permit. Industrial waste discharge permits shall contain conditions which meet the requirements of this chapter, as well as those of applicable state and federal laws and regulations. 1. Wastewater permits must contain the following conditions: a. A statement that indicates permit duration, which in no event shall exceed five years. b. A statement that the permit is nontransferable without prior notification to and approval from the city and provisions for furnishing the new owner or operator with a copy of the existing permit. c. Effluent limits applicable to the user based on applicable standards in federal, state and local law, whichever is most stringent. d. Self-monitoring sampling, reporting, notification and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state and local law. 2. Permits may contain, but need not be limited to, the following: 1. Requirements for maintaining and and records relating to wastewater discharge and affording the director or his representatives access thereto.</p>

Page # & Comment	Language Changes
13-35	<p>13.10.190 Revocation of permit. Any industrial waste discharge permit may be revoked as a result of violations of this chapter, applicable state and/or federal regulations, or the conditions of the permit or any additional reason as identified below:</p> <p>A. Wastewater discharge permits may be revoked for, but not limited to, the following reasons:</p> <ol style="list-style-type: none"> 1. Failure to notify the city of significant changes to the wastewater prior to the changed discharge; 2. Failure to provide prior notification to the city of changed conditions; 3. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application; 4. Falsifying self-monitoring reports; 5. Tampering with monitoring equipment; 6. Refusing to allow the city timely access to the facility premises and records; 7. Failure to meet discharge limitations; 8. Failure to pay fines; 9. Failure to pay sewerwastewater charges; 10. Failure to meet compliance schedules; 11. Failure to complete a wastewater survey or the wastewater discharge permit application; 12. Failure to provide advance notice of the transfer of a permitted facility; 13. If the city has to invoke its emergency provision as cited in Section 9.7 13.10.290(2)(d) of the Ordinance; or
13-41 Note the change is hyphenating multi-family	<p>13.10.240 Customer classes – Billing structure defined. A. Customer Classes Defined. For the purposes of determining rates and assigning service charges, users shall be grouped, accordingly, into one of the following customer classifications:</p> <ol style="list-style-type: none"> 1. Residential. All single-family residential services and multi-family residential services which have individual water meters for each dwelling unit; 2. Multi-residential or Standard Discharge Strength. All multi-family dwellings in which a single water meter provides service not classified elsewhere which have discharge strengths (ROD or 55) not exceeding one and one-half pounds per 100 cubic feet (240 mg/liter) of discharge flow; <p>B. Rate Structure. Sewerwastewater service rates for each of the respective customer classifications enumerated in subsection (A) of this section shall be derived and calculated in accordance with the following standards and fixed by resolution of the city council:</p> <ol style="list-style-type: none"> 2. Multi-residential or Standard Discharge Strength.
13-44	<p>13.10.260 Customers outside city. E. Restoration of Service. SewerWastewater service shall not be restored until all charges, and the expense of removal, closing, and restoration, shall have been paid. Change of ownership or occupancy of premises found delinquent shall not be cause for reducing or eliminating these penalties.</p>

Page # & Comment	Language Changes
14-4	<p>14.05.050 Adoption of state codes.</p> <p>Except as otherwise provided in this code, the following State of Oregon Specialty Codes, Uniform Codes of the International Conference of Building Officials, and state regulations are hereinafter adopted and shall be in force and effect as part of this code, under the authority of ORS 455.153:</p> <p>A. State of Oregon Structural Specialty Code, 1998 Edition, as adopted by ORS 455.01 through 455.895, OAR 918-460-0100000 through 918-460-0150070 (hereinafter “Structural Specialty Code”);</p> <p>B. State of Oregon Mechanical Specialty Code, 1999 Edition.</p> <ol style="list-style-type: none"> 1. State of Oregon Mechanical Specialty Code, 1996 Edition, as adopted by ORS 455.020 and OAR 918-440-0100000 through 918-440-0400510; 2. Mechanical Code Modifications. <ol style="list-style-type: none"> a. Process Piping. Appendix B, Chapter 14 of the UniformInternational Mechanical Code, as promulgated by the International Conference of Building Officials, 1994 Edition, for Hazardous Process Piping (hereinafter “Mechanical Specialty Code”), except as modified in the following subsection. <ol style="list-style-type: none"> b. Section 1401 of this appendix chapter is modified to read as follows: The regulations of this chapter shall govern the installation of hazardous process piping in or in conjunction with a building or structure or located upon the premises. <p>C. State of Oregon Plumbing Specialty Code, 2000 Edition, as adopted by ORS 447.020(2), OAR 918-750-0110 and delegated to the city by ORS 455.153 (hereinafter “Plumbing Specialty Code”);</p> <p>D. State of Oregon Electrical Specialty Code and Interpretations, 1999 Edition,National Electrical Code including Oregon amendmants as adopted by ORS 479.525 and OAR 918-290-010305-0100 (hereinafter “Electrical Specialty Code”);</p> <p>E. State of Oregon One- and Two-Family Dwelling Specialty Code.</p> <ol style="list-style-type: none"> 1. State of Oregon One- and Two-Family Dwelling Specialty Code, 2000 Edition, as adopted by ORS 455.610 and OAR 918-480-0001 through 918-480-0010150 (hereinafter called the “One- and Two-Family Specialty Code”). 2. Violation. Prohibited acts are described in ORS 455.450 and 455.895; <p>F. Uniform Code for the Abatement of Dangerous Buildings, promulgated by the International Conference of Building Officials, 1994 Edition, which is not adopted by the Ddirector of the Department of Consumer and Business Services, but authorized under ORS 455.020 (hereinafter “Dangerous Buildings Code”);</p> <p>G. State of Oregon Regulations, 1997 Edition, for mobile or manufactured dwelling parks; temporary parks; manufactured dwelling installation, support, and tie-down requirements; park or camp requirementsOregon Manufactured Dwelling and Park Specialty Code:</p> <ol style="list-style-type: none"> 1. Parks. Mobile or manufactured dwelling parks requirements adopted under ORS 446.062, including the rules adopted by OAR 918-600-0005 through 918-600-1010030 are enforced as part of this code. 2. Temporary Parks. Temporary parks requirements adopted under ORS 446.105. 3. Manufactured Dwelling Installations. The manufactured dwelling installations, support, and tie-down requirements adopted under ORS 455.608446.230 including the manufactured dwelling rules adopted by OAR 918-500-0000 through 918-500-5000470 and OAR 918-520-0010 through 918-520-0020 are enforced as part of this code. This includes the State of Oregon Manufactured Dwelling Installation Standards, 1997 Edition. 4. Recreational Park and Organizational Camp Regulations. The park or camp requirements adopted under ORS 446.230, including the recreational park and organizational camp rules adopted by OAR 918-650-0000 through 918-650-0085 are enforced as part of this code.

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14-6 Established at County level	<p>14.05.120 Health officer – Powers not affected. Nothing in this code shall affect the powers and duties of the city health officer in any respect; and such powers and duties, together with all regulations pertaining thereto, shall be capable of exercise and enforcement irrespective of and in addition to this code. The city manager shall appoint the city health officer, who shall serve for the term designated in the appointment. The city health officer may be removed by the city manager at any time.</p>
14-8	<p>14.05.250 Liability. A. The building official is charged with the enforcement of this code and the referenced technical codes, shall act in good faith and without malice in the discharge of his/her duties, and is thereby rendered not personally liable for damage that may occur to persons or property as a result of any act or omission in the discharge of the assigned duties of the building official. A suit brought against the building official, his/her designee, or any city employee because of such act or omission performed in the enforcement of the provisions of this code, or other pertinent laws or ordinances implemented through enforcement of this code, city shall be defended by the city until final termination of such proceedings, or any judgment rendered is resulting therefrom assumed by the city.</p>
14-8	<p>14.05.260 Establishment of fees. Fees are established as set forth by resolution of the council, but in no case shall they be less than the fees established within under ORS 455.055 and OAR 918-050-0100 through OAR 918-050-0800.:</p> <ul style="list-style-type: none"> A. Section 107 of the State of Oregon Structural Specialty Code, 1996 Edition; B. Section 115 of the State of Oregon Mechanical Specialty Code, 1996 Edition; C. Section R-1 10.2 of the State of Oregon One and Two Family Dwelling Specialty Code; D. ORS 447.095, the State of Oregon Specialty Plumbing Code, 1996 Edition; E. ORS 479.845, the State of Oregon Electrical Safety Law; and F. OAR 918-400, 918-500 and 918-600, State of Oregon Manufactured Dwelling Rules and Recreational Vehicles.
14-9 Duplicate language as 14.05.230	<p>14.05.290 Work without a permit – Investigation fee. A. Whenever work for which a permit is required by this code has been commenced without first obtaining a permit, a special investigation shall be made before a permit may be issued for such work. B. An investigation fee, in addition to the permit fees, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fees required by this code. The payment of such investigation fee shall not exempt an applicant from compliance with all other provisions of either this code or any technical codes nor from any penalties prescribed by law.</p>
14-9	<p>14.05.300 Adoption of Uniform International Fire Code. There is hereby adopted by the city for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code and standards known as the Uniform International Fire Code, including state amendments as adopted by the State Fire Marshal, and the Uniform International Fire Code Standards published by the Western Fire Chiefs Association and the International Conference of Building Officials, being particularly that edition which is presently adopted by the state of Oregon thereof and the in whole thereof, of which code and standards not less than three copies of said code have been and are now filed in the office of with the city recorder of the city and the same are hereby adopted and incorporated herein as fully as if set out at length herein, and from the effective date of the ordinance codified in on which this chapter shall take effect, the provisions thereof shall be controlling within the limits of the city.</p>
14-10	<p>14.05.310 Establishment and duties of bureau of fire prevention. A. The Uniform International Fire Code and adopted current state code shall be enforced by the fire department of the city which is hereby established and which shall be operated under the supervision of the chief of the fire department.</p>

Page # & Comment	Language Changes
14-10	<p>14.05.320 Definitions.</p> <p>For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:</p> <p>“Corporation counsel,” whenever used in the Uniform Oregon Fire Code, shall be held to mean the city attorney for the city of Newberg, Oregon.</p> <p>“Municipality,” whenever used in the Uniform Oregon Fire Code, shall be held to mean the city of Newberg, Oregon.</p>
14-10	<p>14.05.330 Appeals.</p> <p>Whenever the chief of the fire department disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of this code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal the decision of the chief of the fire department to the State Fire Marshal, in accordance with ORS 479.180, within 10 days from the date of the decision appealed board of appeals in accordance with the Uniform Oregon Fire Code within 30 days from the date of the decision appealed.</p>
15-3	<p>15.05.020 Purpose.</p> <p>B. The Newberg development code constitutes the development and land use regulations for the incorporated area of the city, and These regulations are adopted to protect and promote the public health, safety, and general welfare, and to provide the economic and social advantages which result from an orderly, planned use of land resources. Such regulations are designed to achieve the following objectives:</p> <p>6. To promote safe, fast and efficient movement of people and goods without sacrificing the quality of the city’s environment, minimize street congestion, and to provide for adequate off-street parking.</p> <p>10. To minimize street congestion, secure safety from fire, flood, geological hazards, pollution and other dangers.</p> <p>11. To provide adequate light and air, and to facilitate adequate provisions for transportation, water supply, sewage wastewater disposal, drainage, education, recreation and other services and facilities.</p>

Page # & Comment	Language Changes
15-4 through 15-7	<p>15.05.030 Definitions.</p> <p>"Airport approach safety zone" means a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface except as noted on Airport Overlay Map A (see Appendix B, Map 1). The inner edge of the approach surface is the same width as the primary surface and extends to a width of 1,250 feet for utility runway having only visual approaches, and 1,500 feet for a runway other than a utility runway having only visual approaches. The airport approach surface extends for a horizontal distance of 3,000 feet at a slope of 20 feet outward for each foot upward (20:1) for all utility and visual runways.</p> <p>"Airport imaginary surfaces" means those imaginary areas in space which are defined by the airport approach safety zone, displaced threshold approach surface zone, transitional zones, horizontal zone, and conical surface and in which any object extending above these imaginary surfaces is an obstruction.</p> <p>"Airport imaginary surfaces" means those imaginary areas in space defined below. Any object extending above these imaginary surfaces is an obstruction. The imaginary areas in space are defined by:</p> <ol style="list-style-type: none"> 1. Airport approach safety zone. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface except as noted on Airport Overlay Map A (see Appendix B, Map 2). The inner edge of the approach surface is the same width as the primary surface and extends to a width of 1,250 feet for utility runway having only visual approaches, and 1,500 feet for a runway other than a utility runway having only visual approaches. The airport approach surface extends for a horizontal distance of 3,000 feet at a slope of 20 feet outward for each foot upward (20:1) for all utility and visual runways. 2. Displaced threshold approach surface zone . The imaginary surface depicted on the Displaced Threshold Approach Surface Map (see Appendix B, Map 3). In the plan view, the centerline of this surface extends 3,000 feet along the extended runway centerline. This surface extends upward at a slope of 20 feet outward for each foot upward (20:1). This surface extends laterally 125 feet on each side of the centerline at the threshold and increases in width to 350 feet at a point 2,250 feet from the threshold; thereafter, it extends laterally 350 feet on each side of the centerline. The displaced threshold approach surface extends to the north and begins at the displaced threshold, 360 feet south of the end of the runway as it existed on July 9, 1990. 3. Transitional zones. A zone extending seven feet outward for each one foot upward (7:1) beginning on each side of the primary surface which point is the same elevation as the runway surface, and from the sides of the approach surfaces thence extending upward to a height of 150 feet above the airport elevation (horizontal surface). 4. Horizontal zone. A horizontal plane 150 feet above the established airport elevation the perimeter of which is constructed by swinging arcs of 5,000 feet from the center of each end of the primary surface of each visual or utility runway and connecting the adjacent arcs by lines tangent to those arcs. 5. Conical surface. Surface extending 20 feet outward for each one foot upward (20:1) for 4,000 feet beginning at the edge of the horizontal surface (5,000 feet from the center of each end of the primary surface of each visual and utility runway at 150 feet above the airport elevation) and upward extending to a height of 350 feet above the airport elevation.

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15-8 through 15-19	<p>15.05.030 Definitions.</p> <p>“Antenna support structure” means a tower, pole, mast or other structure deemed to be a structure under the Uniform Building Code of the state of Oregon current edition of the Oregon Structural Specialty Code that is intended to support a source of RF energy and accessory equipment.</p> <p>“Building manager official” means the chief of the building division or his designee. The building manager official is subordinate to the director.</p> <p>“Carport” means a stationary structure consisting of a roof with supports, where 50% or more of its perimeter is open on its sides, and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle, boat, trailer, RV, or similar item.</p> <p>“Cemetery” means land used or intended to be used for cemetery purposes, including columbaria, crematories, mausoleums, and mortuaries, when operated in conjunction with and within the boundary of such cemetery.</p> <p>“Conical surface” extends 20 feet outward for each one foot upward (20:1) for 4,000 feet beginning at the edge of the horizontal surface (5,000 feet from the center of each end of the primary surface of each visual and utility runway at 150 feet above the airport elevation) and upward extending to a height of 350 feet above the airport elevation.</p> <p>“Director” means the Newberg planning and building director or his designee.</p> <p>“Displaced threshold approach surface zone” means the imaginary surface depicted on the Displaced Threshold Approach Surface Map (see Appendix B, Map 3). In the plan view, the centerline of this surface extends 3,000 feet along the extended runway centerline. This surface extends upward at a slope of 20 feet outward for each foot upward (20:1). This surface extends laterally 125 feet on each side of the centerline at the threshold and increases in width to 350 feet at a point 2,250 feet from the threshold; thereafter, it extends laterally 350 feet on each side of the centerline. The displaced threshold approach surface extends to the north and begins at the displaced threshold, 360 feet south of the end of the runway as it existed on July 9, 1990.</p> <p>"DLCD" means the Oregon Department of Land Conservation and Development.</p> <p>“Family” means an individual, or two or more persons related by blood or marriage, or a group of not more than five persons (excluding servants household employee) who need not be related by blood or marriage, living together in a dwelling unit. “Family” may include two or more people with disabilities, as defined in the Fair Housing Amendments Act of 1988, living as a single housekeeping unit.</p> <p>“Horizontal surface” means a horizontal plane 150 feet above the established airport elevation the perimeter of which is constructed by swinging arcs of 5,000 feet from the center of each end of the primary surface of each visual or utility runway and connecting the adjacent arcs by lines tangent to those arcs.</p> <p>“Transitional zones” extend seven feet outward for each one foot upward (7:1) beginning on each side of the primary surface which point is the same elevation as the runway surface, and from the sides of the approach surfaces thence extending upward to a height of 150 feet above the airport elevation (horizontal surface).</p> <p>"LCDC" means the Oregon Land Conservation and Development Commission, directs the Department of Land Conservation and Development.</p> <p>“Manufactured home” means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards regulations current edition of the Oregon Manufactured Dwelling and Park Specialty Code in effect at the time of construction.</p> <p>“Modular home” means a dwelling meeting Uniform Building Code current edition of the Oregon Structural Specialty Code standards constructed and inspected prior to installation on a preformed foundation. Modular homes are not constructed with attached wheels and are not intended for moving on the highway without a special trailer.</p> <p>“Partition plat” means a final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a major or minor partition.</p> <p>“Planning manager” means the superintendent of the planning division. The planning manager is subordinate to the director.</p>
15-23	15.100.040 Type II procedure – Residential Subdivisions.
15-29	<p>15.100.210 Mailed notice.</p> <p>Mailed notice shall be provided as follows:</p> <p>A. Type I Actions. No public notice is required because no public hearing is required.</p>

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15-34	<p>15.100.360 Record of proceedings. The secretary to the hearing body shall take minutes at each hearing and shall cause the proceedings to be recorded.</p> <p>A. Minutes from the meeting shall be transcribed and made available for public review within 45 days of the proceeding.</p> <p>B. The hearing body shall, where practicable, retain as part of the hearing record each item of physical or documentary evidence presented and shall have the items marked to show the identity of the person offering the item and whether presented on behalf of a proponent or opponent. Exhibits received into evidence shall be retained in the hearing file until after the applicable appeal period has expired or in accordance to the City's records retention schedule, whichever retention is longer, at which time the exhibits may be released to the person identified on the exhibit, or otherwise disposed of.</p> <p>D. Any person shall have access to the record of proceedings, copies of which shall be made available for a reasonable price in accordance to the City's records request policy.</p>
15-37	<p>15.205.070 Partially destroyed buildings or structures. A. Conditions for Restoration – Extension. 2. An extension of the 12-month period may be approved by the planning commission through a Type III process. In order to approve receive an extension the applicant must demonstrate compliance with the following criteria. The planning commission may deny the extension based on inadequate demonstration that all of the criteria can be met.</p>
15-61 A. is obsolete due to technology. K is moved from 15.510.080	<p>15.235.170 Information required. The proposed subdivision or partition plat must contain the following information with respect to the subject area:</p> <p>A. Traverse Computation Sheets, Subdivision Only. The registered engineer or licensed land surveyor signing the surveyor's affidavit on the plat shall submit traverse computation sheets for the use of the director in checking the plat. Said sheets shall include the calculation of each course and distance by latitude and departure of all the boundary lines and of all lot lines in the subdivision area, and for all boundaries and all lots in the plat which are not completely rectangular in shape. Each course and distance and each latitude and departure shall be tabulated on the traverse computation sheet in the proper order to show the closure limits of each area, and rectangular coordinates of every angle point shall be extended and shown from a single meridian and from a single point of origin.</p> <p>J. The location, dimensions and purpose of all recorded and proposed public and private easements and all reserve strips shall be shown on the subdivision or partition plat along with the county clerk's recording reference if the easement has been recorded with the county clerk.</p> <p>K. Before a partition or subdivision can be approved, there shall appear thereon a restriction providing that no building, structure, or other obstruction shall be placed or located on or in a public utility easement.</p> <p>K.L. A designation of all areas covered by water, and the approximate location, width and direction of flow of all watercourses.</p> <p>L.M. A designation of all areas dedicated by the applicant, including proposed uses, and an effective written dedication thereof.</p> <p>M.N. Designation of all donations to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water systems, the donation of which was made a condition of approval of the tentative plan for the subdivision or partition.</p> <p>N.O. A copy of all protective deed restrictions being proposed.</p> <p>O.P. A title report issued by a title insurance company licensed by the state of Oregon, verifying ownership by the applicant of the real property that is to be dedicated to the public.</p>

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15-62	<p>15.235.180 Approval signatures for final partition map and subdivision plat. B. Approval of a final subdivision plat shall be acknowledged by including thereon the authorized signature of: 3. The county or city surveyor, certifying that the subdivision plat complies with applicable survey laws.</p>
15-63	<p>15.235.190 Dedication. E. Inclusion of a transportation route in the transportation plan is intended to indicate the public's need to acquire a public right-of-way in the area through legally and constitutionally allowed means. Notwithstanding other provisions of this code or the comprehensive plan, inclusion of such a route does not restrict the use of the property by the owner who owns the property when the route is first included in any city plan, unless the review body finds the restriction is exempt from those provisions of ORS Chapter 197, as amended by Ballot Measure 3749, passed November 2, 2004, 6, 2007, or that just compensation will be paid in accordance with that section.</p>
15-68	<p>15.240.030 Preliminary plan consideration – Step one. B. Application. An application, with the required fee, for preliminary plan approval shall be made by the owner of the affected property, or the owner's authorized agent, on a form prescribed by and submitted to the director. Applications, accompanied by such additional copies as requested by the director for purposes of referral, shall contain or have attached sufficient information as prescribed by the director to allow processing and review in accordance with these regulations. As part of the application, the property owner requesting the planned development shall file a waiver stating that the owner will not file any demand against the city under Ballot Measure 3749, approved November 2, 2004, 6, 2007, that amended ORS Chapter 197 based on the city's decision on the planned development.</p>
15-72	<p>15.250.040 Annexation procedures. F. The city shall place a notice of the annexation election shall be published in a newspaper of general circulation in the city not more than 30 days nor less than 20 days prior to the date of the election. Such notice shall take the form of a minimum one-quarter-page layout, which includes a map of the property to be annexed and unbiased information regarding the annexation.</p>
15-73	<p>15.250.050 Application requirements. A. Written consent to the annexation signed by the requisite number of affected property owners, electors, or both to conduct an election within the area to be annexed, as provided by state law. The consent shall include a waiver stating that the owner will not file any demand against the city under Measure 3749, approved November 2, 2004, 6, 2007, that amended ORS Chapter 197.</p>

Page # & Comment	Language Changes
15-75	<p>15.302.010 Establishment and designation of use districts and subdistricts.</p> <p>A. Use Districts.</p> <ol style="list-style-type: none"> 1. AI airport industrial. 2. AR airport residential. 3. R-1 low density residential district. 23. R-2 medium density residential district. 34. R-3 high density residential district. 45. RP residential-professional district. 56. C-1 neighborhood commercial district. 67. C-2 community commercial district. 78. C-3 central business district. 89. C-4 riverfront district. 910. CF community facilities district. 1011. I institutional district. 1112. M-1 limited industrial district. 1213. M-2 light industrial district. 1314. M-3 heavy industrial district. 1415. SD Springbrook district. <p>B. Subdistricts of Use Districts.</p> <ol style="list-style-type: none"> 1. AO airport overlay subdistrict. 2. AIO airport industrial overlay subdistrict. 3. ARO airport residential overlay subdistrict 4. BI bypass interchange subdistrict. 5. CC civic corridor overlay subdistrict. 6. H historic landmarks subdistrict. 7. IO institutional overlay subdistrict. 8. LU limited use overlay subdistrict. 9. RF riverfront subdistrict. 710. SC stream corridor overlay subdistrict. 811. SP specific plan subdistrict.
15-76	<p>15.302.030 Procedures for comprehensive plan map and zoning map amendments.</p> <p>A. Type III Plan and Zoning Map Amendments – One Parcel or Small Group of Parcels.</p> <p>4. The property owner who desired to have his their property reclassified has the burden of establishing that the requested classification meets the requirements of this section. As part of the application, the property owner requesting a change shall file a waiver stating that the owner will not file any demand against the city under Ballot Measure 3749, approved November 2, 2004 6, 2007, that amended ORS Chapter 197.</p>
15-84	<p>15.310.010 Description and purpose.</p> <p>The RP residential-professional district provides for a desirable mixing of residential land uses with professional office uses in possible close proximity to adjacent low density residential areas. The professional office building and parking coverage, traffic generation, open space and other external factors are intended to be compatible with the residential uses permitted. This district may be appropriate in transition areas between major land uses as indicated in the adopted plan. The RP district is intended to be consistent with commercial or residential designations on the Newberg comprehensive plan. RP districts shall be located as to conform to goals and policies identified within the Newberg comprehensive plan and in areas which have a minimal impact on the livability or appropriate development of abutting property. [Ord. 96-2451, 12-2-96. Ord. 1968, 7-2-79]</p>

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15-87	<p>15.314.010 Description and purpose. The C-2 community commercial district is intended to create, preserve and enhance areas with a wide range of retail sales and service establishments serving both long- and short-term needs in compact locations typically appropriate to commercial clusters near intersections of major thoroughfares. This district also includes some development which does not strictly fit the description of this section through NMC 15.316.030 but also does not merit a separate zoning district. The C-2 district is intended to be consistent with the commercial and mixed use designations of the comprehensive plan.</p>
15-87 Please renumber to fix the error in missing number 3.	<p>15.314.020 Permitted buildings and uses. A. In the C-2 community commercial district, the following buildings and uses are permitted as hereinafter specifically provided: B. These buildings and uses are subject to the general provisions and exceptions set forth in this code:</p> <ol style="list-style-type: none"> 1. Accessory buildings and uses normal and incidental to the buildings and uses permitted in this section and NMC 15.314.030. 2. Agricultural machinery sales and service. 43. Ambulance services. 54. Antique shops.
15-101	<p>15.328.020 Permitted buildings and uses. A. Ambulance and paramedic services. B. College and university facilities, including uses such as: 20. Radio towers and transmitters, subject to the standards listed in §151.01215.445.180 to 15.445.240.</p>
15-109	<p>15.340.030 Conditional uses within the airport approach safety zone. B. Any use, building, or structure which is otherwise permitted and is within the height limits of the displaced threshold approach surface but exceeds the height limits of the airport approach safety zone. The sole criteria for approval of such uses are as follows: 2. The landowner shall sign and record in the deed and mortgage records of Yamhill County a hold harmless agreement and avigation and hazard easement and submit them to the airport sponsor and the Newberg planning managerplanning and building director or designee.</p>
15-118	<p>15.344.030 Alteration, new construction, demolitions. A. Exterior Alterations. 2. Director Review of Minor Alterations Type I. a. The director shall approve minor alteration requests through the Type I procedure if there is no significant change in appearance, or in original material integrity, from the existing structure or site. The director's approval may include conditions to assureensure compatibility. Minor alterations meeting the following standards shall be approved and shall be documented by written findings:</p>
15-123	<p>15.346.040 Plan implementation. B. New Construction. New construction undersubject to site design review or building permit review shall meet the special development and design standards of the specific plan.</p>

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15-124 & 15-125 Please change A & B to the same format as definitions with a bold or underline. These are hard to see.	15.346.070 Specific plan development standards. Development standards for specific plans are listed below. The standards shall be utilized in conjunction with the specific plan adopted as an exhibit to the SP overlay subdistrict. This section is intended to be amended as new specific plans are adopted. <u>A. The Northwest Newberg Specific Plan.</u> <u>B. Springbrook Oaks Specific Plan.</u>
15-135	15.352.030 The riverfront plan general provisions. F. Visual/Noise Buffer. A visual/noise buffer shall be developed along River Street in such a manner as to: 1. Promote the protection of SP Newsprint, or current owner of paper mill , from uses that may complain against or otherwise hinder the operation of this important industrial facility due to visual and noise impacts; and
15-142	15.405.010 Lot area – Lot areas per dwelling unit. A. In the following districts, each lot or development site shall have an area as shown below except as otherwise permitted by this code: 2. In the AI, AR, R-2, R-3, RP, C-1, C-2, and C-3 districts, each lot or development site shall have a minimum area of 5,000 square feet or as may be established by a subdistrict.
15-143 & 15-144	15.405.040 Lot coverage and parking coverage requirements. A. For all buildings and uses the following shall mean the maximum permitted lot coverage, maximum coverage of public or private parking areas or garages carports , and/or combined maximum lot and parking combined coverage required in the various districts expressed in percentage of the area of the lot or development site in which district such coverage is permitted or required (see Appendix A, Figure 4). B. All other districts not listed in subsection (A) of this section shall not be limited as to lot coverage and parking area coverage except as otherwise required by the NMC.
15-149	15.415.040 Public access required. No building or structure shall be erected or altered except on a lot fronting or abutting on a public street or having access to a public street over a private street or easement of record approved in accordance with provisions contained in this code. New private streets may not be created to provide access except as allowed under NMC 15.332.020(B)(24) and 15.336.020(B)(8). Existing private streets may not be used for access for new dwelling units, except as allowed under NMC 15.405.030. No building or structure shall be erected or altered without provisions for access roadways as required in the Uniform Oregon Fire Code, as adopted by the city.
15-149 to 15-150	15.415.050 Rules and exceptions governing single-family attached dwellings. G. Authorization of single-family attached dwelling units does not waive any requirement specified within the Uniform Building Codes current edition of the Oregon Residential Specialty Code or other applicable requirements.
15-157	15.425.010 Purpose. The purpose of this chapter is to regulate the placement, orientation, distribution patterns, and fixture types of on-site outdoor lighting. The intent of this section is to provide minimum lighting standards that promote safety, utility, and security, prevent glare on public roadways, and protect the privacy of residents. Public street lighting is governed by NMC 15.425.020.

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15-159	<p>15.435.020 Applicability and exemptions. B. If any of the signs listed above require permits under the Uniform Sign Code current edition of the Oregon Structural Specialty Code, the sign shall be placed only following issuance of such permit.</p>
15-159	<p>15.435.030 Permit required. B. The following do not require sign permits, but must otherwise comply with the standards of this chapter: 5. If any of the signs listed above require permits under the Uniform Sign Code current edition of the Oregon Structural Specialty Code, the sign shall be placed only following the issuance of such permit.</p>
15-159	<p>15.435.040 General requirements – All signs. A. All signs shall comply with the standards contained in the Uniform Sign Code, 1997 Edition or most recent, published by the International Conference of Building Officials current edition of the Oregon Structural Specialty Code. If the standards of that code and this development code conflict, this development code shall prevail. All signs shall be kept in repair and in a proper state of preservation as required under the Uniform Sign Code current edition of the Oregon Structural Specialty Code.</p>
15-161	<p>15.435.070 Major attached. D. Projections. Major attached signs may project into the required front yard no more than five feet and into the required interior yards not more than two feet; provided, that such projections are no closer than three feet to any interior lot line. For buildings in the C-3 zone, major attached signs may project up to five feet into the right-of-way, but not closer than two feet from the curb line. The lower edge of any major attached sign shall be at least eight feet above ground level. This requirement supersedes the relevant sign standards in the Uniform Sign Code current edition of the Oregon Structural Specialty Code.</p>
15-161	<p>15.435.080 Minor attached signs and awning signage. A. Minor Attached Signs. 4. Projections. a. C-3 Zone. Minor attached signs may project no more than three feet into a public right-of-way, but no closer than two feet from the curb line. The lower edge of any minor attached sign shall be at least eight feet above ground level. This requirement supersedes the relevant sign standards in the Uniform Sign Code current edition of the Oregon Structural Specialty Code.</p>
15-171	<p>15.440.070 Parking tables and diagrams. Diagram 3 Notes: 1. Bumpers must be installed where paved areas abut street right-of-way (except at driveways). 2. No stalls shall be such that cars must back over the property line to enter or leave stall. 3. Stalls must be clearly marked and the markings must be maintained in good condition. 4. The sketches show typical situations to illustrate the required standards. For further information or advice, contact the community development planning department at 537-1210.</p>

Page # & Comment	Language Changes
15-175	<p>15.445.010 Bed and breakfast establishments. Bed and breakfast establishments shall comply with the following conditions: A. The structure used for a bed and breakfast establishment shall be designed for and occupied as a single-family residence. The structure shall maintain the characteristics of a single-family residence. B. All residences used for bed and breakfast establishments shall be applicant occupied. C. A minimum of one off-street parking space shall be provided for every two permitted guest sleeping rooms. In addition, parking standards normally required for single-family residences will apply. D. The duration of each guest’s stay at the bed and breakfast establishment shall be limited to no more than seven consecutive days and no more than 15 days within a 30-day period. E. Bed and breakfast establishments located in other than single-story buildings shall provide permanent or portable fire escape systems from the upper floor(s) in a manner acceptable to the Newberg fire department. F. All bed and breakfast establishments shall conform to the requirements of the Uniform Building and Fire Codes current edition of the Oregon Structural Specialty Code and Oregon Fire Code.</p>
15-186	<p>15.445.260 Development standards. B. Limitations. An accessory dwelling unit is permitted, providing there is compliance with all of the following standards: 3. The number of residents permitted to inhabit the accessory dwelling unit is regulated by the Uniform Building Code current edition of the Oregon Residential Specialty Code.</p>
15-186	<p>15.445.280 Amateur radio and citizen band antenna. A. Amateur radio and citizen band antenna support structures and amateur radio and citizen band antennas, which themselves are deemed structures under the Uniform Building Code (UBC) of the state of Oregon Oregon Structural Specialty Code or the Oregon Residential Specialty Code., that are located in a residential district, shall require a development permit. All other amateur radio and citizen band antennas that are located in residential districts shall not require a development permit but shall conform to the applicable provisions of this code.</p>
15-190	<p>15.505.080 Reserve block. The director may require the land divider to create a reserve block controlling the access to a street, said block to be placed under the jurisdiction of the City if the director determines that a block is necessary. [Ord. 99-2513, 8-2-99; Ord. 96-2451, 12-2-96. Code 2001 § 151.687. Ord. 2411, 12-4-95]</p>
15-193	<p>15.505.170 Guidelines for locating major street alignments. A. The director shall determine the location of major streets, including collectors, minor arterials, and arterials, which do not have a set alignment, by applying the guidelines defined in this section. A major street location shall be prepared which addresses each of these guidelines. The director shall use a Type II process as outlined in this development code to establish the street alignment after the director determines that the guidelines have been adequately addressed by the applicant. B. Guidelines for locating major streets which do not have a set alignment are as follows: 2. Efficiency of the identified route versus other routes as defined by the following: d. Access which meets the standards rRoute minimizes traffic conflict and access points.</p>

Page # & Comment	Language Changes		
Table C-1	Resolution Table		
	87 -1255	5-4-87	(Repealed)
	92 -1708	6-16-92	(Superseded by Ord. 95 -2418)
	93 -1774	6-7-93	(Repealed)
	95 -1907	4-17-95	(Repealed)
	97 -2053	6-2-97	Personnel policies (2.20 Superseded by Res. 2638)
	2000 -2276	12-4-00	(Repealed by Ord. 2000 -2538)
	2638	4-17-06	Personnel policies (2.20)
	2807	9-2-08	Council Guidelines and Rules (2.05.160)
Table E-86 There were code amendments in the ordinance, which need made and noted	Ordinance Table		
	2006 -2657	9-5-06	Amending the Springbrook Oaks Specific Plan, changing the zoning designation of part of Areas F and G to R-P (Residential-Professional), and amending the Newberg Development Code, Comprehensive Plan, Comprehensive Plan Map, and Zoning Map. Not codified
Table E-87 There were code amendments in Exhibit 6 of the ordinance, which need made and noted	Ordinance Table		
	2007 -2678	9-4-07	Adopts Springbrook master plan.
15-196	15.510.010 Submitting specifications. The director shall prepare and submit to the city council specifications and amendments thereto for construction of streets and alleys, construction of curbs and gutters, dedication of slope easements for streets and alleys, construction of drainage facilities, and construction of pedestrian ways in subdivisions and partitions. Such specifications shall conform to proper relevant engineering standards relevant thereto , and be so devised as to facilitate provision for the health, safety and welfare needs of the city and area affected, in accordance with this code.		
15-197	15.510.070 Street trees. Street trees shall be provided adjacent to all public rights-of-way abutting or within a subdivision or partition, or as required as part of a design review or other development . Street trees shall be installed in accordance with the provisions of NMC 15.420.010(B)(4).		
15-197	15.510.080 Easements for utilities. Dedication of easements for stormwater sewers systems , and for access thereto for maintenance, in order to safeguard the public against flood damage and the accumulation of surface water and maintenance, and dedication of easements for other public utilities, may be required of the land divider at sufficient widths for their intended uses, by the director along lot or parcel rear lines or side lines, or elsewhere as necessary to provide needed facilities for present or future development of the area in accordance with the purpose of this code. Before a partition or subdivision can be approved, there shall appear thereon a restriction providing that no building, structure, or other obstruction shall be placed or located on or in a public utility easement.		

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DATE ACTION REQUESTED: February 7, 2011

Order ____ **Ordinance** ____ **Resolution** XX **Motion** ____ **Information** ____
No. ____ **No.** ____ **No.** 2011-2928

SUBJECT: Authorize the City Manager to amend the current Newberg Animal Shelter design contract with LCG Pence Construction, LLC in the amount of \$8,000 to conduct an intense value engineering effort on the design during their completion of the final design and bid package and obtain a new Guaranteed Maximum Price.

**Contact Person (Preparer) for this Resolution: Rob Charles, PW Director
 Larry Fain, Project Manager**

Dept.: Public Works - Engineering

File No.:

RECOMMENDATION:

Proceed with value engineering on the project and obtain a new Guaranteed Maximum Price from LCG Pence Construction, LLC.

EXECUTIVE SUMMARY:

The City of Newberg has pursued the Construction Manager/General Contractor (CM/GC) alternative procurement for the preconstruction/design and construction services for the Newberg Animal Shelter Project. The City Council approved the alternative procurement process on December 7, 2009, by Resolution 2009-2877.

The original contract for the pre-construction and design services was awarded for \$49,958.00. The contract was later modified with Change Order 1 for a \$2,500.00 increase to address enhanced energy saving mechanical, electrical and plumbing (MEP) design efforts. These efforts were requested and funded by Energy Trust of Oregon (ETO). No animal shelter funds were used for that additional effort.

LCG Pence Construction, LLC, the selected contractor on the project has submitted a Guaranteed Maximum Price (GMP) of \$783,235.00 for the shell and an additional \$46,497.00 to provide sewer to the building for a total of \$829,732.00. The addition of the mini-core work required to obtain a certificate of occupancy adds another \$245,237.00 for a total of \$1,074,969.00. Of those costs, a small portion could be charged to a Public Works Department account (\$44,171.00) as a general infrastructure improvement of the future Public Works Department yard area. Those costs will be part of the fiscal year 11/12 budget preparation. The current fund balance for the animal shelter is \$388,746.13. This leaves a project construction funding shortfall of \$642,051.87 for the shell, sewer service, and mini-core. A sketch of the site is attached as Attachment "A" and by this reference incorporated.

Additional normal project costs for the Newberg Animal Shelter would be a 5% construction contingency fund of approximately \$50,000.00 and building permit fees of approximately \$60,000.00. The building permit fees are all city fees except \$375.00 to the state and another \$4,150.00 to the Newberg School District.

To start to address this funding shortfall, the staff and the contractor are proposing to conduct an intense value engineering (VE) effort that would look at all the functional aspects and focus on what could be changed to reduce costs while retaining as much functional capability as possible. There are several items which could be considered as part of a VE effort and incorporated into the final design and bid documents. These could be used to potentially decrease the overall project costs.

Some of the potential areas that will be considered were identified in the LCG Pence Construction, LLC letter dated December 4, 2010, and are as follows:

- Utilize trench drains in lieu of custom stainless steel scuppers.
- Eliminate under-slab heating in its entirety. Use infrared heat if required.
- Simplify roof structure to eliminate clearstory and power actuated windows.
- Reduce or eliminate concrete block on exterior and interior partition walls.
- Eliminate rear third portion of the structure completely. Construct in the future as funds become available.
- Modify the facade of the building and use regular windows in lieu of store front.
- Modify grading of the site for future buildings until required.
- Simplify the HVAC system to incorporate unit heaters for the kennel areas and “Cadet” type heaters in the restrooms and grooming areas.
- Utilize standard steel building insulation, R-19 with vinyl vapor barriers at sidewalls and roof, to meet code prior to October 1, 2011 building code change.
- Plus other as yet un-identified potential items, that would normally be developed as part of the VE process.

Implementation of these changes could potentially save approximately \$150,000 plus in construction costs. A VE workshop with key members from all affected parties to the project would fast track the project so plans could be completed quickly and a new GMP from LCG Pence Construction, LLC could be prepared for staff review.

Below are staff’s recommended steps to bring this project to completion on the design side and obtain the best construction pricing:

- 1) Authorize the City Manager to amend the current contract with LCG Pence Construction, LLC to include the value engineering (VE) component.
- 2) After completion of the VE, obtain a new GMP from LCG Pence Construction, LLC and present to Council for approval to construct. If review of the new GMP is not satisfactory to the City, then an option might be to break out certain components of the project from the contract and bid them separately. LCG Pence would then construct the remaining portion of the project. There could be several potential problems with the City becoming the “prime contractor” and splitting up the bid packages, procuring, qualifying, monitoring, and coordinating additional sub-contractors. Additionally this would further delay the project and could result in an additional fee claim from LCG Pence Construction, LLC.
- 3) If the GMP through LCG Pence Construction, LLC and/or pricing by contractors on individual components of the project is not successful or practical per step 2, staff would recommend that the contract be let for all qualified contractors to bid on.

After completion of the value engineered design, staff would report back to Council with a new negotiated GMP from LCG Pence Construction, LLC and make a recommendation as to whether to accept the new GMP or to reject the new GMP and proceed with solicitation of public bids for the

construction. Additionally, at that point a funding plan would be presented to the Council on how to bridge the funding gap.

Staff anticipates that the VE workshop could occur as early as March, with the final design and bid documents being completed in late April. LCG Pence Construction, LLC would then prepare sub-contracting bid packages, obtain bids in May through mid-June, and would present a new GMP shortly thereafter. Staff would then review and negotiate a final GMP and make a recommendation to Council in the month of July. If the GMP is acceptable construction could then begin immediately and the facility be completed in November 2011.

Therefore, the staff recommends that the City Council authorize the City Manager to amend the current CM/GC design contract with LCG Pence Construction, LLC (currently totaling \$52,458.00) to include \$8,000.00 to value engineer the current design plans. This would bring the total contract amount to **\$60,458.00**.

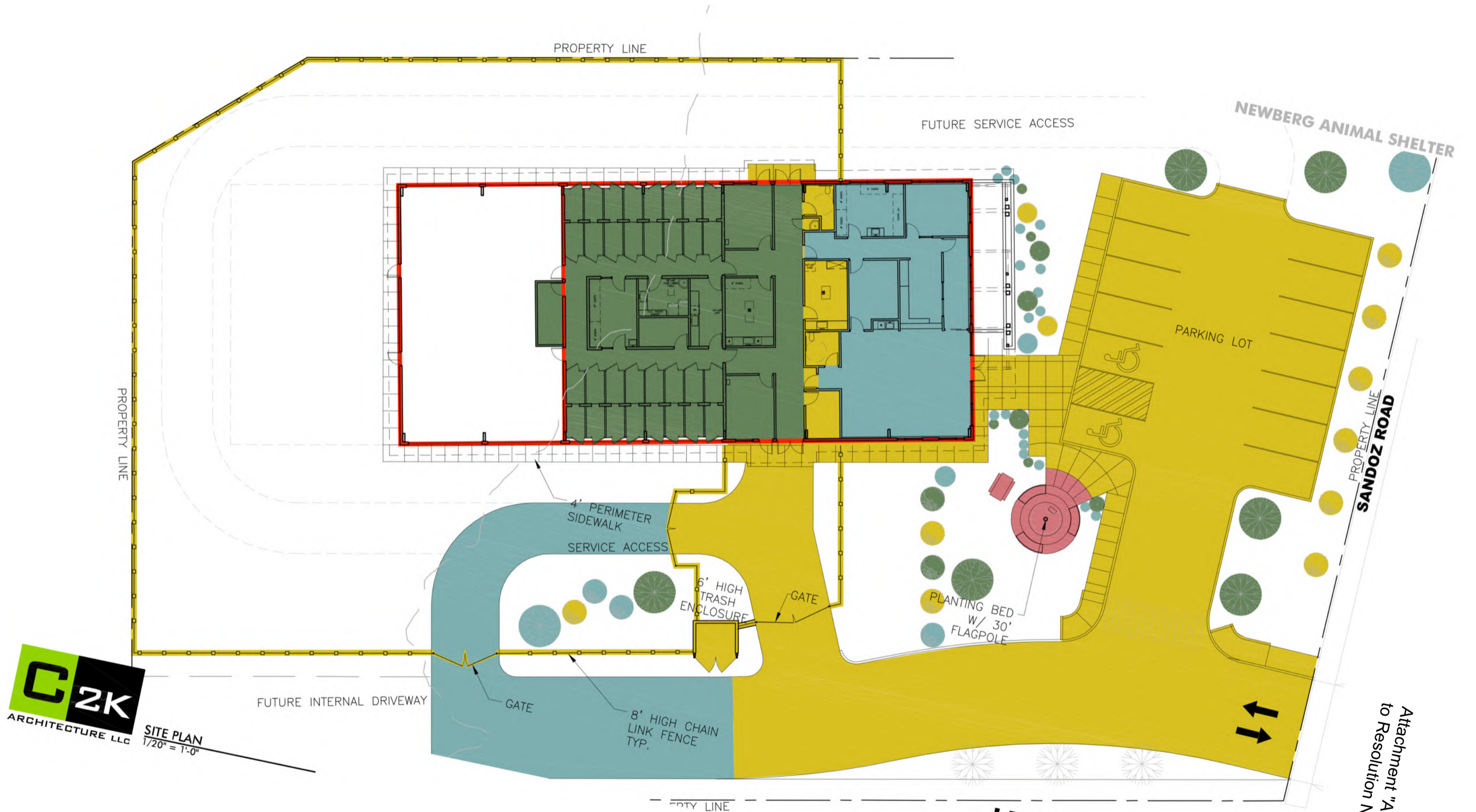
Operational aspects (hours of operation, staffing, equipment, vehicles, food, utility and other costs) of the Newberg Animal Shelter will be addressed by the Police Department as part of the FY 11/12 budget preparation.

FISCAL IMPACT:

The fiscal year 10/11 budget can support this contract change in the amount of \$8,000.00. Funding is available in the Newberg Animal Shelter Fund account number 24-5150-731008.

STRATEGIC ASSESSMENT:

This project is required to address Newberg's Animal Control program.



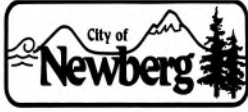
SITE PLAN
1/20" = 1'-0"

LEGEND

- SHELL
- MINI-CORE
- ESSENTIAL CORE
- FULL BUILD OUT
- SEPARATE FLAG POLE

FAIN PHASE PLAN
AUGUST 25, 2010

Attachment "A"
to Resolution No. 2010-2928 RCA



RESOLUTION No. 2011-2928

A RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CURRENT NEWBERG ANIMAL SHELTER DESIGN CONTRACT WITH LCG PENCE CONSTRUCTION, LLC IN THE AMOUNT OF \$8,000.00 TO CONDUCT AN INTENSE VALUE ENGINEERING EFFORT ON THE DESIGN DURING THEIR COMPLETION OF THE FINAL DESIGN AND BID PACKAGE AND OBTAIN A NEW GUARANTEED MAXIMUM PRICE

RECITALS:

1. The City is in the process of designing and constructing a new Newberg Animal Shelter (NAS).
2. A contract was awarded to LCG Pence Construction, LLC for pre-construction and design services in the amount of \$49,958.00. The contract was later modified with Change Order 1 for a \$2,500.00 increase to address enhanced energy saving mechanical, electrical and plumbing (MEP) design efforts.
3. The contractor, LCG Pence Construction, LLC, has submitted a Guaranteed Maximum Price (GMP) based on the 90% design for **\$1,074,969.00**.
4. It is anticipated that an intense value engineering (VE) effort would look at all the functional aspects and focus on what could be modified to reduce costs while retaining as much functional capability as possible. This effort is best incorporated into the final design and bid package preparation.
5. LCG Pence Construction LLC has requested \$8,000.00 to conduct this additional intense VE effort.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The city authorizes and delegates the authority to the city manager to negotiate, amend, approve, and execute a modification to the existing contract with LCG Pence Construction, LLC to execute an intense value engineering effort, in the amount of \$8,000.00.
2. The contract for construction of the NAS, based on the revised final design and bid documents with a GMP, will be presented to the City Council for final awarding of the construction contract for the project.

3. At the time that the NAS GMP is presented to the Council, the City staff is directed to present not only the GMP, but also a review of the funding methods proposed to support the project.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 8, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 7th day of February 2011.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 10th day of February 2011.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through _____ Committee at ____ / ____ / ____ meeting. Or, None.
(committee name) (date) (check if applicable)

**Attached is supplemental material
for the
February 7, 2011,
City Council Meeting**

Please include this in your packet:

**VI-1
Resolution No. 2011-2926
WWTP Loan Exhibit “B”
Add**

**VI-3
Proclamation for Coach Casey
Replace**

**VII-1
Order No. 2011-0030 - Meridian St. Rezone
Staff Report & Ex-parte Contact Material
Add**

**VII-2
Ordinance No. 2011-2733
Recodification Attachment “A”
Replace**

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Supplemental Material for
Resolution No. 2011-2926
Exhibit “B”

**CLEAN WATER STATE REVOLVING FUND
LOAN AGREEMENT
No. R68820**

BETWEEN

**THE STATE OF OREGON
ACTING BY AND THROUGH ITS
DEPARTMENT OF ENVIRONMENTAL QUALITY**

AND

CITY OF NEWBERG

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THIS LOAN AGREEMENT is made and entered into as of the date it is fully executed by both parties (and in the case of the State, approved by the Attorney General's Office, if required) and is by and between the **State of Oregon, acting by and through its Department of Environmental Quality ("DEQ")**, and the **Borrower** (as defined below). Unless the context requires otherwise, capitalized terms not defined below shall have the meanings assigned to them by ARTICLE 9 of this Loan Agreement. The reference number for the Loan made pursuant to this Loan Agreement is Loan No. R68820.

DEQ agrees to make, and Borrower agrees to accept, the Loan on the terms and subject to the conditions set forth below.

ARTICLE 1: THE LOAN - SPECIFIC TERMS

DEQ agrees to make the Loan on the following terms and conditions:

- (A) **BORROWER:** City of Newberg.
- (B) **BORROWER'S ADDRESS:** City of Newberg
414 E. First Street
Newberg, Oregon 97132
Fax 503-537-1277
- (C) **LOAN AMOUNT:** \$11,409,645.
- (D) **TYPE AND PURPOSE OF LOAN.** The Loan is a "Revenue Secured Loan" made by DEQ pursuant to OAR Section 340-054-0065(2) for the purpose of financing the Project.
- (E) **PROJECT TITLE:** Wastewater Treatment Upgrades.
- (F) **DESCRIPTION OF THE PROJECT:** Design and construction of improvements to the Borrower's wastewater treatment facility, including a secondary clarifier, disinfection, dechlorination, headworks and influent pump station.
- (G) **INTEREST RATE:** Two and 88/100 percent (2.88%) per annum. Calculation of interest is also discussed in ARTICLE 2(E) and in ARTICLE 2(F)(4) of this Agreement.
- (H) **REPAYMENT PERIOD:** Subject to ARTICLE 1(I), twenty (20) years commencing the Completion Date.
- (I) **TERMS OF REPAYMENT:** An interest-only payment within six months after the estimated Project Completion Date set forth in ARTICLE 3(A)(10) and thereafter semi-annual payments of principal and interest in accordance with Appendix A and ARTICLE 2(F) of this Agreement.
- (J) **PLEDGE:** The Borrower hereby grants to DEQ a security interest in and irrevocably pledges its Net Operating Revenues to pay the amounts due under this Loan Agreement. The Net Operating Revenues so pledged and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act,

and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent permitted by ORS 287A.310. The Borrower represents and warrants that the pledge of Net Operating Revenues hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310. The Borrower covenants with DEQ and any assignee of this Agreement that except as otherwise expressly provided herein, the Borrower shall not issue any other obligations which have a pledge or lien on the Net Operating Revenues superior to or on a parity with the pledge herein granted without the written permission of DEQ. This Loan is a parity obligation with all other CWSRF loans between DEQ and the Borrower and with the loans number G04002 and B07007, with 10/01/2010 balances of \$1,851,105 and \$7,951,148, respectively, from the Oregon Business Development Department; provided, however, that this provision shall not affect the priority that such loans are entitled to in relation to any loans between Borrower and any third parties.

(K) ANNUAL FEE: An annual fee of 0.5% of the Outstanding Loan Amount (as determined prior to the posting of the payment due on that date) is due during the Repayment Period commencing with the second payment date hereunder and annually thereafter.

ARTICLE 2: GENERAL LOAN PROVISIONS

(A) AGREEMENT OF DEQ TO LOAN. DEQ agrees to loan the Borrower an amount not to exceed the Loan Amount, subject to the terms and conditions of this Loan Agreement, but solely from funds available to DEQ in the Water Pollution Control Revolving Fund for its Clean Water State Revolving Fund program. This Loan Agreement is given as evidence of a Loan to the Borrower made by DEQ pursuant to ORS Chapters 190, 286A, 287A, and 468, and OAR Chapter 340, all as amended from time to time, consistent with the express provisions hereof.

(B) AVAILABILITY OF FUNDS. DEQ's obligation to make the Loan described in this Agreement is subject to the availability of funds in the Water Pollution Control Revolving Fund for its CWSRF program, and DEQ shall have no liability to the Borrower or any other party if such funds are not available or are not available in amounts sufficient to fund the entire Loan described herein. Funds may not be available ahead of the estimated schedule of disbursements submitted by the Borrower, which is attached as Appendix B. This schedule may be revised from time to time by the parties without the necessity of an amendment by replacing the then current Appendix B with an updated Appendix B which is dated and signed by both parties.

(C) DISBURSEMENT OF LOAN PROCEEDS.

(1) Project Account(s). Loan proceeds (as and when disbursed by DEQ to the Borrower) shall be deposited in a Project account(s). The Borrower shall maintain Project account(s) as segregated account(s). Funds in the Project account(s) shall only be used to pay for Project costs, and all earnings on the Project account(s) shall be credited to the account(s).

(2) Documentation of Expenditures. The Borrower shall provide DEQ with written evidence of materials and labor furnished to and performed upon the Project and such receipts for the payment of the same, releases, satisfactions and other signed statements and forms as DEQ may reasonably require. DEQ will disburse funds to

pay Project costs only after the Borrower has provided documentation satisfactory to DEQ that such Project costs have been incurred and qualify for reimbursement hereunder.

(3) Adjustments and Corrections. DEQ may at any time review and audit requests for disbursement and make adjustments for, among other things, ineligible expenditures, mathematical errors, items not built or bought, unacceptable work and other discrepancies. Nothing in this Agreement requires DEQ to pay any amount for labor or materials unless DEQ is satisfied that the claim therefor is reasonable and that the Borrower actually expended and used such labor or materials in the Project. In addition, DEQ shall not be required to make any disbursement which would cause the total of all disbursements made hereunder (including the requested disbursement) to be greater than the total estimated cost of the work completed at the time of the disbursement, as determined by DEQ.

(4) Contract Retainage Disbursement. DEQ will not disburse Loan proceeds to cover contractor retainage unless the Borrower is disbursing retainage to an escrow account and provides proof of the deposit, or until the Borrower provides proof that it paid retained funds to the contractor.

(D) **AGREEMENT OF BORROWER TO REPAY.** The Borrower agrees to repay all amounts owed on this Loan as described in ARTICLE 1(I) and ARTICLE 2(F) in U.S. Dollars in immediately available funds at the place listed for DEQ in ARTICLE 10(A). In any case, the Borrower agrees to repay all amounts owed on this Loan within the Repayment Period.

(E) **INTEREST.** Interest will accrue at the rate specified in ARTICLE 1(G) from the date that a disbursement hereunder is mailed or delivered to the Borrower or deposited into an account of the Borrower. Interest will accrue using a 365/366 day year and actual days elapsed until the Final Loan Amount is determined and the final repayment schedule is prepared and thereafter on a 360-day year basis and actual days elapsed.

(F) **LOAN REPAYMENT.**

(1) Preliminary Repayment Schedule; Interim Payments. The attached Appendix A is a preliminary repayment schedule based on the estimated date of the first disbursement hereunder and Loan Amount. Until the final repayment schedule is effective, the Borrower shall make the payments set forth in the preliminary repayment schedule.

(2) Final Repayment Schedule. After the Borrower has submitted its final request for Loan proceeds and DEQ has made all required disbursements hereunder, DEQ will determine the Final Loan Amount and prepare a final payment schedule that provides for level semi-annual installment payments of principal and interest (commencing on the next semi-annual payment date), each in an amount sufficient to pay accrued interest to the date of payment and to pay so much of the principal balance as to fully amortize the then Outstanding Loan Amount over the remaining Repayment Period.

(3) Crediting of Scheduled 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. Scheduled payments

will be applied first to fees due, if any, and then to interest, according to the applicable repayment schedule, and then to principal.

(4) Crediting of Unscheduled Payments. All unscheduled payments, including any prepayments and partial payments, will be applied first to fees due, if any, and then to accrued unpaid interest (which will be computed as otherwise provided in this Agreement, except that interest from the last payment date will be calculated using a 365/366 day year and actual days elapsed), and then to principal. In the case of a Loan prepayment that does not prepay all of the principal of the Loan, DEQ will determine, in its sole discretion, how it will apply such Loan prepayment to the Outstanding Loan Amount. After a partial payment, DEQ may, in its sole and absolute discretion, reamortize the Outstanding Loan Amount at the same interest rate for the same number of payments to decrease the Loan payment amount; provided, however, that nothing in this Agreement requires DEQ to accept any partial payment or to reamortize the Outstanding Loan Amount if it accepts a partial payment.

(5) Final Payment. The Outstanding Loan Amount, all accrued and unpaid interest, and all unpaid fees and charges due hereunder are due and payable no later than twenty (20) years after the Completion Date.

(G) PREPAYMENT.

(1) Optional Prepayment. The Borrower may prepay any amount owed on this Loan without penalty on any business day upon 24 hours prior written notice. Any prepayment made hereunder will be applied in accordance with ARTICLE 2(F)(4).

(2) Refinancing of Loan by the Borrower. If the Borrower refinances the portion of the Project financed by this Loan or obtains an additional grant or loan that is intended to finance the portion of the Project financed by this Loan, it will prepay the portion of the Loan being refinanced by the additional grant or loan.

(3) Ineligible Uses of the Project. If the Borrower uses the Project for uses that are other than those described in ARTICLE 1(F) ("ineligible uses"), the Borrower shall, upon demand by DEQ, prepay an amount equal to the Outstanding Loan Amount multiplied by the percentage (as determined by DEQ) of ineligible use of the Project. Such prepayment shall be applied against the most remotely maturing principal installments and shall not postpone the due date of any payment(s) hereunder.

(H) LATE PAYMENT FEE. The Borrower agrees to pay immediately upon DEQ's demand a late fee equal to five percent (5%) of any payment (including any loan fee) that is not received by DEQ on or before the tenth (10th) calendar day after such payment is due hereunder.

(I) TERMINATION OF LOAN AGREEMENT. Upon performance by the Borrower of all of its obligations under this Loan Agreement, including payment in full of the Final Loan Amount, all accrued interest and all fees, charges and other amounts due hereunder, this Loan Agreement will terminate, and DEQ will release its interest in any collateral given as security under this Loan Agreement.

ARTICLE 3: GENERAL REPRESENTATIONS, WARRANTIES AND COVENANTS

(A) REPRESENTATIONS AND WARRANTIES OF THE BORROWER. The Borrower represents and warrants to DEQ that:

(1) It is a duly formed and existing public agency (as defined in ORS 468.423(2)) and has full power and authority to enter into this Loan Agreement.

(2) This Agreement has been duly authorized and executed and delivered by an authorized officer of the Borrower and constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms.

(3) All acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Agreement have existed, have happened, and have been performed in due time, form and manner as required by law.

(4) Neither the execution of this Loan Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with any of the terms and conditions of this Loan Agreement will violate any provision of law, or any order of any court or other agency of government, or any agreement or other instrument to which the Borrower is now a party or by which the Borrower or any of its properties or assets is bound. Nor will this Loan Agreement be in conflict with, result in a breach of, or constitute a default under, any such agreement or other instrument, or, except as provided hereunder, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower.

(5) This Loan Agreement does not create any unconstitutional indebtedness. The Loan Amount together with all of the Borrower's other obligations does not, and will not, exceed any limits prescribed by the Constitution, any of the statutes of the State of Oregon, the Borrower's charter, or any other authority.

(6) The Project is a project which the Borrower may undertake pursuant to Oregon law and for which the Borrower is authorized by law to borrow money.

(7) The Borrower has full legal right and authority and all necessary licenses and permits required as of the date hereof to own, operate and maintain the Facility and the Project, other than licenses and permits relating to the Facility or the Project which the Borrower expects to and shall receive in the ordinary course of business, to carry on its activities relating thereto, to execute and deliver this Agreement, to undertake and complete the Project, and to carry out and consummate all transactions contemplated by this Agreement.

(8) The information contained herein which was provided by the Borrower is true and accurate in all respects, and there is no material adverse information relating to the Project or the Loan, known to the Borrower, that has not been disclosed in writing to DEQ.

(9) No litigation exists or has been threatened that would cast doubt on the enforceability of the Borrower's obligations under this Loan Agreement.

(10) The estimated Completion Date of the Project is October 1, 2012. The Borrower agrees to complete the Project by the estimated Completion Date.

(11) The estimated total Costs of the Project are \$ 11,500,000.

(12) The Borrower is in compliance with all laws, ordinances, and governmental rules and regulations to which it is subject, the failure to comply with which would materially adversely affect the ability of the Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Borrower or the Project.

(B) CONTINUING REPRESENTATIONS OF THE BORROWER. The representations of the Borrower contained herein shall be true on the closing date for the Loan and at all times during the term of this Agreement.

(C) REPRESENTATIONS AND WARRANTIES OF DEQ. DEQ represents and warrants that the Director has power under ORS Chapter 468 and OAR Chapter 340, Division 54, to enter into the transactions contemplated by this Loan Agreement and to carry out DEQ's obligations thereunder and that the Director is authorized to execute and deliver this Loan Agreement and to make the Loan as contemplated hereby.

ARTICLE 4: CONDITIONS TO LOAN

(A) CONDITIONS TO CLOSING. DEQ's obligations hereunder are subject to the condition that on or prior to March 30, 2011, the Borrower will duly execute and deliver to DEQ the following items, each in form and substance satisfactory to DEQ and its counsel:

(1) this Agreement duly executed and delivered by an authorized officer of the Borrower;

(2) a copy of the ordinance, order or resolution of the governing body of the Borrower authorizing the execution and delivery of this Agreement, certified by an authorized officer of the Borrower;

(3) an opinion of the legal counsel to the Borrower to the effect that:

(a) The Borrower has the power and authority to execute and deliver and perform its obligations under this Loan Agreement;

(b) This Loan Agreement has been duly executed and acknowledged where necessary by the Borrower's authorized representative(s), all required approvals have been obtained, and all other necessary actions have been taken, so that this Loan Agreement is valid, binding, and enforceable against the Borrower in accordance with its terms, except as such enforcement is affected by bankruptcy, insolvency, moratorium, or other laws affecting creditors rights generally;

(c) To such counsel's knowledge, this Loan Agreement does not violate any other agreement, statute, court order, or law to which the Borrower is a party or by which it or any of its property or assets is bound; and

(d) The Net Operating Revenues used as security for the Loan will **not** constitute taxes that are limited by Section 11b, Article XI of the Oregon Constitution; and

(4) such other documents, certificates, opinions and information as DEQ or its counsel may reasonably require.

(B) CONDITIONS TO DISBURSEMENTS. Notwithstanding anything in this Agreement to the contrary, DEQ shall have no obligation to make any disbursement to the Borrower under this Agreement unless:

(1) No Event of Default and no event, omission or failure of a condition which would constitute an Event of Default after notice or lapse of time or both has occurred and is continuing;

(2) All of the Borrower's representations and warranties in this Agreement are true and correct on the date of disbursement with the same effect as if made on such date; and

(3) The Borrower submits a disbursement request to DEQ that complies with the requirements of ARTICLE 2(C);

provided, however, DEQ shall be under no obligation to make any disbursement if:

(1) there is insufficient money available in the SRF and CWSRF Program for the Project; or

(2) there has been a change in any applicable state or federal law, statute, rule or regulation so that the Project is no longer eligible for the Loan.

ARTICLE 5: COVENANTS OF BORROWER

(A) GENERAL COVENANTS OF THE BORROWER. Until the Loan is paid in full, the Borrower covenants with DEQ that:

(1) The Borrower shall use the Loan funds only for payment or reimbursement of the Costs of the Project in accordance with this Loan Agreement. The Borrower acknowledges and agrees that the Costs of the Project do NOT include any Lobbying costs or expenses incurred by Borrower or any person on behalf of Borrower and that Borrower will not request payment or reimbursement for Lobbying costs and expenses.

(2) If the Loan proceeds are insufficient to pay for the Costs of the Project in full, the Borrower shall pay from its own funds and without any right of reimbursement from DEQ all such Costs of the Project in excess of the Loan proceeds.

(3) The Borrower is and will be the owner of the Facility and the Project and shall defend them against the claims and demands of all other persons at any time claiming the same or any interest therein.

(4) The Borrower shall not sell, lease, transfer, or encumber or enter into any management agreement or special use agreement with respect to the Facility or any financial or fixed asset of the utility system that produces the Net Operating Revenues without DEQ's prior written approval, which approval may be withheld for any reason. Upon sale, transfer or encumbrance of the Facility or the Project, in whole or in part, to a private person or entity, this Loan shall be immediately due and payable in full.

(5) Concurrent with the execution and delivery of this Loan Agreement, or as soon thereafter as practicable, the Borrower shall take all steps necessary to cause the Project to be completed in a timely manner in accordance with all applicable DEQ requirements.

(6) The Borrower shall take no action that would adversely affect the eligibility of the Project as a CWSRF project or cause a violation of any Loan covenant in this Agreement.

(7) The Borrower shall undertake the Project, request disbursements under this Loan Agreement, and use the Loan proceeds in full compliance with all applicable laws and regulations of the State of Oregon, including but not limited to ORS Chapter 468 and Oregon Administrative Rules Sections 340-054-0005 to 340-054-0065, as they may be amended from time to time, and all applicable federal authorities and laws and regulations of the United States, including but not limited to Title VI of the Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4, the federal cross-cutters listed at Appendix D (attached hereto and by this reference made a part hereof) and regulations of the U.S. Environmental Protection Agency, all as they may be amended from time to time.

(8) The Borrower shall keep the Facility in good repair and working order at all times and operate the Facility in an efficient and economical manner. The Borrower shall provide the necessary resources for adequate operation, maintenance and replacement of the Project and retain sufficient personnel to operate the Facility.

(9) Interest paid on this Loan Agreement is *not* excludable from gross income under Section 103(a) of the United States Internal Revenue Code of 1986, as amended (the "Code"). However, DEQ may have funded this Loan with the proceeds of state bonds that bear interest that is excludable from gross income under Section 103(a) of the Code. Section 141 of the Code requires that the state not allow the proceeds of the state bonds to be used by private entities (including the federal government) in such a way that the state bonds would become "private activity bonds" as defined in Section 141 of the Code. To protect the state bonds the Borrower agrees that it shall not use the Loan proceeds or lease, transfer or otherwise permit the use of the Project by any private person or entity in any way that that would cause this Loan Agreement or the state bonds to be treated as "private activity bonds" under Section 141 of the Code and the regulations promulgated under that Section of the Code.

(B) DEBT SERVICE COVERAGE REQUIREMENT; WASTEWATER RATE COVENANT; REPORTING.

(1) Debt Service Coverage Requirement. The Borrower shall maintain wastewater rates and charge fees in connection with the operation of the Facility that are adequate to generate Net Operating Revenues in each fiscal year sufficient to pay (i) all debt service (excluding debt service on the Loan), (ii) all other financial obligations imposed in connection with prior lien obligations of the Borrower, and (iii) an amount equal to the debt service coverage factor of 105% multiplied by the debt service payments due under this Loan Agreement in that fiscal year; provided, however, the amount required under (i) shall include any amounts required by DEQ to provide coverage satisfactory to DEQ on prior lien obligations or new lien obligations the Borrower may incur that DEQ determines are inadequately secured or otherwise may adversely affect the ability of the Borrower to repay the Loan.

(2) Wastewater Rate Adjustments. The Borrower shall review its wastewater rates and fees at least annually. If, in any fiscal year, the Borrower fails to collect fees sufficient to meet the debt service coverage requirement described in ARTICLE 5(B)(1), the Borrower shall promptly adjust its wastewater rates and fees to assure future compliance with such coverage requirement. The Borrower's adjustment of the wastewater rates and fees does **not** constitute a cure of any default by the Borrower of the debt service coverage requirement set forth in ARTICLE 5(B)(1). The Borrower's failure to adjust rates shall not, at the discretion of DEQ, constitute a default if the Borrower transfers to the fund that holds the Net Operating Revenues unencumbered resources in an amount equal to the revenue deficiency to the Facility that produces the Net Operating Revenues.

(3) Reporting Requirement. By December 31 of each year the Borrower shall provide DEQ with a report that demonstrates the Borrower's compliance with the requirements of this ARTICLE 5(B). If the audit report described in ARTICLE 5(F) identifies the Net Operating Revenues and contains a calculation demonstrating whether the Borrower satisfied the requirements of this ARTICLE 5(B), that audit will satisfy the requirements of this ARTICLE 5(B)(3).

(C) LOAN RESERVE REQUIREMENT; LOAN RESERVE ACCOUNT.

(1) Loan Reserve Requirement. The Loan reserve requirement equals 100% times one-half of the average annual debt service based on the final repayment schedule. Until the Final Loan Amount is calculated, the Loan reserve requirement is \$379,856. The Borrower shall deposit the Loan reserve requirement amount into the Loan Reserve Account no later than the date the first payment is due hereunder.

(2) Loan Reserve Account. The Borrower shall create a segregated Loan Reserve Account that shall be held in trust for the benefit of DEQ. The Borrower hereby grants to DEQ a security interest in and irrevocably pledges the Loan Reserve Account to pay the amounts due under this Loan Agreement. The funds in Loan Reserve Account so pledged and hereafter received by the Borrower shall immediately be subject to the lien of such pledge without physical delivery or further act, and the lien of the pledge shall be superior to all other claims and liens whatsoever, to the fullest extent

permitted by ORS 287A.310. The Borrower represents and warrants that the pledge of the Loan Reserve Account hereby made by the Borrower complies with, and shall be valid and binding from the date of this Agreement pursuant to, ORS 287A.310. The Borrower shall use the funds in the Loan Reserve Account solely to pay amounts due hereunder until the principal, interest, fees, and any other amounts due hereunder have been fully paid.

(3) Additional Deposits. If the balance in the Loan Reserve Account falls below the Loan reserve requirement, the Borrower shall promptly deposit from the first Net Operating Revenues available after payment of the amounts due hereunder (unless the Borrower has previously made such deposit from other money of the Borrower) an amount sufficient to restore the balance up to the Loan reserve requirement.

(D) **INSURANCE.** At its own expense, the Borrower shall, during the term of this Agreement, procure and maintain insurance coverage (including, but not limited to, hazard, flood and general liability insurance) adequate to protect DEQ's interest and in such amounts and against such risks as are usually insurable in connection with similar projects and as is usually carried by entities operating similar facilities. The insurance shall be with an entity which is acceptable to DEQ. The Borrower shall provide evidence of such insurance to DEQ. Self insurance maintained pursuant to a recognized municipal program of self-insurance will satisfy this requirement.

(E) **INDEMNIFICATION.** *The Borrower shall, to the extent permitted by law and the Oregon Constitution, indemnify, save and hold the State, its officers, agents and employees harmless from and (subject to ORS Chapter 180) defend each of them against any and all claims, suits, actions, losses, damages, liabilities, cost and expenses of any nature whatsoever resulting from, arising out of or relating to the acts or omissions of the Borrower or its officers, employees, subcontractors or agents in regard to this Agreement or the Project.*

(F) THE BORROWER'S FINANCIAL RECORDS; FINANCIAL REPORTING REQUIREMENTS.

(1) Financial Records. The Borrower shall keep proper and complete books of record and account and maintain all fiscal records related to this Agreement, the Project, and the Facility in accordance with generally accepted accounting principles, generally accepted government accounting standards, the requirements of the Governmental Accounting Standards Board, and state minimum standards for audits of municipal corporations. The Borrower must maintain separate Project accounts in accordance with generally accepted government accounting standards promulgated by the Governmental Accounting Standards Board. The Borrower will permit DEQ and the Oregon Secretary of State and their representatives to inspect its properties, and all work done, labor performed and materials furnished in and about the Project, and DEQ, the Oregon Secretary of State and the federal government and their duly authorized representatives shall have access to the Borrower's fiscal records and other books, documents, papers, plans and writings that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts and take copies.

(2) Record Retention Period. The Borrower shall retain and keep accessible files and records relating to the Project for at least three (3) years (or such longer period as

may be required by applicable law) after Project completion as determined by DEQ and financial files and records until all amounts due under this Loan Agreement are fully repaid, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

(3) Audit. Federal enabling legislation and applicable regulations require an audit of each CWSRF Loan. The Borrower agrees to provide to DEQ the following which DEQ agrees to accept as adequate to meet this federal audit requirement.

(a) As soon as possible, but in no event later than six (6) months following the Project Completion Date, a full and complete accounting of the Costs of the Project, including but not limited to documentation to support each cost element and a summary of the Costs of the Project and the sources of funding; and

(b) As soon as possible, but in no event later than nine (9) months after the end of each fiscal year, a copy the Borrower's annual audit report.

(4) Single Audit Act Requirements. The CWSRF Program receives capitalization grants through the Catalog of Federal Domestic Assistance ("CFDA") No. 66.458: Capitalization Grants for State Revolving Funds and is subject to the regulations of the U.S. Environmental Protection Agency ("EPA"). The CWSRF Program is subject to the U.S. Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" implementing the Single Audit Act Amendments of 1996 ("Circular A-133"). As a sub-recipient of a federal grant, the Borrower is subject to Circular A-133 to the extent that Loan proceeds include federal capitalization grant funds. DEQ will notify the Borrower of the sources of the Loan funds at the end of each fiscal year, and to the extent required, the Borrower is responsible for compliance with the requirements of Circular A-133.

(G) **DBE GOOD FAITH EFFORT**. Pursuant to the good faith efforts described in Appendix C, the Borrower shall make a good faith effort to promote fair share awards to Minority Business Enterprises ("MBE"), Women's Business Enterprises ("WBE"), and Small Businesses in Rural Areas ("SBRA") on all contracts and subcontracts awarded as part of the Project. The Borrower agrees to include, in its contract with its prime contractor(s), the following language, which cannot be altered in any way:

"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."

(H) **PROJECT ASSURANCES**. Nothing in this Loan Agreement prohibits the Borrower from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing Project work.

**ARTICLE 6: REPRESENTATIONS, WARRANTIES, COVENANTS AND CONDITIONS RELATING TO
CONSTRUCTION PROJECTS ONLY**

**(A) THE BORROWER'S REPRESENTATION AND WARRANTY REGARDING COSTS
ALREADY INCURRED.**

(1) The Borrower represents and warrants to DEQ that, as of the date of this Loan Agreement, the Costs of the Project actually incurred by the Borrower for construction, do not exceed \$-0-.

(2) The Borrower acknowledges that DEQ is relying upon the Borrower's representation regarding the amount of Costs of the Project incurred by the Borrower for construction prior to the date of this Loan Agreement as set forth in ARTICLE 6(A)(1) above to determine what portion of the Loan qualifies as a "refinancing" under the EPA's Clean Water State Revolving Fund regulations, 40 C.F.R. Part 35, that may be disbursed on a reimbursement basis.

(B) CONDITION TO DISBURSEMENTS. DEQ's obligation to make disbursements hereunder is further conditioned on the following:

(1) The Borrower's plans, specifications and related documents for the Project shall be reviewed and approved by DEQ.

(2) The Borrower has submitted documentation satisfactory to DEQ that the disbursement is for work that complies with plans, specifications, change orders and addenda approved by DEQ.

(3) The Borrower has submitted a copy of the awarded contract and bid documents (including a tabulation of all bids received) to DEQ for the portion of the Project costs that will be funded with the disbursement.

(C) GENERAL PROVISIONS. The Borrower covenants with DEQ that:

(1) Construction Manual. Unless stated otherwise in this Agreement, the Borrower shall comply with the requirements set forth in the current version of the Manual. DEQ will provide the Borrower with a copy of the Manual upon request.

(2) Plans and Specifications. The Borrower shall obtain DEQ's review and approval of the Borrower's plans, specifications, and related documents for the Project prior to any disbursement of Loan proceeds hereunder.

(3) Change Orders. The Borrower shall submit all change orders to DEQ. The Borrower shall not use any Loan proceeds to pay for costs of any change order that DEQ has not approved in writing. This ARTICLE 6(C)(3) shall not prevent the Borrower from using funds other than Loan proceeds to pay for a change order before DEQ approves it, but the Borrower bears the risk that DEQ will not approve the change order.

(4) Inspections; Reports. The Borrower shall provide inspection reports during the construction of the Project as required by DEQ to ensure that the Project

complies with approved plans and specifications. Qualified inspectors shall conduct these inspections under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. DEQ or its representative(s) may enter property owned or controlled by the Borrower to conduct interim inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with the Loan Agreement, as appropriate.

(5) Asbestos and Other Hazardous Materials. The Borrower shall ensure that only persons trained and qualified for removal of asbestos or other Hazardous Materials will remove any asbestos or Hazardous Materials, respectively, which may be part of this Project.

(6) Operation and Maintenance Manual. The Borrower shall submit to DEQ a draft Facility operation and maintenance manual before the Project is fifty percent (50%) complete. The Borrower shall submit to DEQ a final Facility operation and maintenance manual that meets DEQ's approval before the Project is ninety percent (90%) complete.

(7) Project Performance Certification. The Borrower shall submit to DEQ draft performance standards before the Project is fifty percent (50%) complete. The Borrower shall submit to DEQ final performance standards that meet DEQ's approval before the Project is ninety percent (90%) complete. The Borrower shall submit to DEQ the following done in accordance with the Manual: (i) no later than 10.5 months after the Initiation of Operation (as that term is defined in OAR 340-054-0010(26)), a performance evaluation report based on the approved performance standards; (ii) within one year after the Project's Initiation of Operation, Project performance certification statement; and (iii) within two (2) months of submission of such Project performance certification statement, a corrective action plan for any Project deficiencies noted in said statement.

(8) Alterations After Completion. The Borrower shall not materially alter the design or structural character of the Project after completing the Project without DEQ's written approval.

(9) Project Initiation of Operations.

(a) The Borrower shall notify DEQ of the Initiation of Operation no more than thirty (30) days after the actual Project Completion Date.

(b) If the Project is completed, or is completed except for minor items, and the Project is operable, but DEQ has not received a notice of Initiation of Operation from the Borrower, DEQ may assign an Initiation of Operation date.

(D) PROVISION APPLICABLE TO CONTRACTS AND SUBCONTRACTS AWARDED FOR THE PROJECT

(1) Davis-Bacon Requirements. All contracts and subcontracts awarded as part of the Project shall comply with (1) the wage rate requirements of the Davis-Bacon Act, as amended, 40 U.S.C. §§3141 to 3144, 3146 and 3147 (2002), and (2) the requirements of the *Prevailing Wage Rates for Public Works Projects in Oregon*

established under ORS 279C.800 through 279C.870 and OAR 839-025-0000 through 839-025-0540. The Borrower agrees that it will insert into any contract in excess of \$2,000 for construction, and will cause its subcontractors to insert in any sub-contract the Davis-Bacon language set forth in Part 1 of Appendix E, and Part 2 of Appendix E as applicable.

(2) Retainage. The Borrower shall require a five percent (5%) retainage in all of its contracts related to the Project for an amount greater than One Hundred Thousand Dollars (\$100,000).

ARTICLE 7: DISCLAIMERS BY DEQ; LIMITATION OF DEQ'S LIABILITY

(A) **DISCLAIMER OF ANY WARRANTY.** DEQ EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE PROJECT, THE QUALITY OF MATERIALS SUPPLIED TO AND THAT BECOME A PART OF THE PROJECT, THE QUALITY OF THE WORKMANSHIP PERFORMED UPON THE PROJECT, OR THE EXTENT AND STAGE OF COMPLETION OF THE PROJECT. No such warranty or guarantee shall be implied by virtue of any inspection or disbursement made by DEQ. Any inspection done by DEQ shall be for its sole benefit.

(B) **DISCLAIMER OF LIABILITY OF DEQ.** DEQ EXPRESSLY DISCLAIMS LIABILITY OF ANY KIND OR CHARACTER WHATSOEVER FOR PAYMENT OF LABOR OR MATERIALS OR OTHERWISE IN CONNECTION WITH THE COMPLETION OF THE PROJECT OR CONTRACTS ENTERED INTO BY THE BORROWER WITH THIRD PARTIES FOR THE COMPLETION OF THE PROJECT. All Project costs of labor, materials and construction, including any indirect costs, shall be the responsibility of and shall be paid by the Borrower.

(C) **NONLIABILITY OF STATE.**

(1) The State and its officers, agents and employees shall not be liable to the Borrower or to any other party for any death, injury, damage, or loss that may result to any person or property by or from any cause whatsoever, arising out of any defects in the plans, design drawings and specifications for the Project, any agreements or documents between the Borrower and third parties related to the Project or any activities related to the Project. DEQ shall not be responsible for verifying cost-effectiveness of the Project, doing cost comparisons or reviewing or monitoring compliance by the Borrower or any other party with state procurement laws and regulations.

(2) The Borrower hereby expressly releases and discharges DEQ, its officers, agents and employees from all liabilities, obligations and claims arising out of the Project work or under the Loan, subject only to exceptions previously agreed upon in writing by the parties.

(3) Any findings by DEQ concerning the Project and any inspections or analyses of the Project by DEQ are for determining eligibility for the Loan and disbursement of Loan

proceeds only. Such findings do not constitute an endorsement of the feasibility of the Project or its components or an assurance of any kind for any other purpose.

(4) Review and approval of Facilities plans, design drawings and specifications or other documents by or for DEQ does not relieve the Borrower of its responsibility to properly plan, design, build and effectively operate and maintain the Facility as required by law, regulations, permits and good management practices.

ARTICLE 8: DEFAULT AND REMEDIES

(A) **EVENTS OF DEFAULT.** The occurrence of one or more of the following events constitutes an Event of Default, whether occurring voluntarily or involuntarily, by operation of law or pursuant to any order of any court or governmental agency:

(1) The Borrower fails to make any Loan payment within thirty (30) days after the payment is scheduled to be made according to the repayment schedule;

(2) Any representation or warranty made by the Borrower hereunder was untrue in any material respect as of the date it was made;

(3) The Borrower becomes insolvent or admits in writing an inability to pay its debts as they mature or applies for, consents to, or acquiesces in the appointment of a trustee or receiver for the Borrower or a substantial part of its property; or in the absence of such application, consent, or acquiescence, a trustee or receiver is appointed for the Borrower or a substantial part of its property and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement or moratorium or any dissolution or liquidation proceeding is instituted by or against the Borrower and, if instituted against the Borrower, is consented to or acquiesced in by the Borrower or is not dismissed within twenty (20) days;

(4) As a result of any changes in the United States Constitution or the Oregon Constitution or as a result of any legislative, judicial, or administrative action, any part of this Loan Agreement becomes void, unenforceable or impossible to perform in accordance with the intent and purposes of the parties hereto or is declared unlawful;

(5) The Borrower defaults in the performance or observance of any covenants or agreements contained in any loan documents between itself and any lender or lenders, and the default remains uncured upon the expiration of any cure period provided by said loan documents; or

(6) The Borrower fails to cure non-compliance in any material respect with any other covenant, condition, or agreement of the Borrower hereunder, other than as set forth in (1) through (5) above within a period of thirty (30) days after DEQ provides notice of the noncompliance.

(B) REMEDIES. If DEQ determines that an Event of Default has occurred, DEQ may, without further notice:

- (1) Declare the Outstanding Loan Amount plus any unpaid accrued interest, fees and any other amounts due hereunder immediately due and payable;
- (2) Cease making disbursement of Loan proceeds or make some disbursements of Loan proceeds and withhold or refuse to make other disbursements;
- (3) Appoint a receiver, at the Borrower's expense, to operate the Facility that produces the pledged revenues and collect the Gross Revenues
- (4) Set and collect utility rates and charges;
- (5) Pay, compromise or settle any liens on the Facility or the Project or pay other sums required to be paid by the Borrower in connection with the Project, at DEQ's discretion, using the Loan proceeds and such additional money as may be required. If DEQ pays any encumbrance, lien, claim, or demand, it shall be subrogated, to the extent of the amount of such payment, to all the rights, powers, privileges, and remedies of the holder of the encumbrance, lien, claim, or demand, as the case may be. Any such subrogation rights shall be additional cumulative security for the amounts due under this Loan Agreement;
- (6) Direct the State Treasurer to withhold any amounts otherwise due to the Borrower from the State of Oregon and, to the extent permitted by law, direct that such funds be applied to the amounts due DEQ under this Loan Agreement and be deposited into the SRF;
- (7) Pursue any other legal or equitable remedy it may have.

ARTICLE 9: DEFINITIONS

(A) "BORROWER" means the public agency (as defined in ORS 468.423(2)) shown as the "Borrower" in Article 1(A) of this Agreement.

(B) "COMPLETION DATE" means the date on which the Project is completed. If the Project is a planning project, the Completion Date is the date on which DEQ accepts the planning project. If the Project is a design project, the Completion Date is the date on which the design project is ready for the contractor bid process. If the Project is a construction project, the Completion Date is the date on which the construction project is substantially complete and ready for Initiation of Operation.

(C) "COSTS OF THE PROJECT" means expenditures approved by DEQ that are necessary to construct the Project in compliance with DEQ's requirements and may include but are not limited to the following items:

- (1) Cost of labor and materials and all costs the Borrower is required to pay under the terms of any contract for the design, acquisition, construction or installation of the Project;

- (2) Engineering fees for the design and construction of the Project.
- (3) The costs of surety bonds and insurance of all kinds that may be required or necessary during the course of completion of the Project;
- (4) The legal, financing and administrative costs of obtaining the Loan and completing the Project; and
- (5) Any other costs approved in writing by DEQ.
- (D) "**CWSRF PROGRAM**" or "**CWSRF**" means the Clean Water State Revolving Fund Loan Program, a loan program administered by DEQ under ORS 468.423 to 468.440.
- (E) "**DEQ**" means the Oregon Department of Environmental Quality.
- (F) "**DIRECTOR**" means the Director of DEQ or the Director's authorized representative.
- (G) "**FACILITY**" means all property owned or used by the Borrower to provide wastewater collection, treatment and disposal services, of which the Project is a part.
- (H) "**FINAL LOAN AMOUNT**" means the total of all Loan proceeds disbursed to the Borrower under the Loan Agreement, determined on the date on which the Borrower indicates that no further Loan funds will be requested, all eligible expenditures have been reimbursed from the Loan proceeds, or all Loan proceeds have been disbursed hereunder, whichever occurs first.
- (I) "**GROSS REVENUES**" means all fees and charges resulting from operation of the Facility and any interest earnings thereon; provided however, Gross Revenues does not include: the proceeds of any grants; the proceeds of any borrowings for capital improvements; the proceeds of any liability insurance; or the proceeds of any casualty insurance which the Borrower intends to and does utilize for repair or replacement of the Facility or a part thereof.
- (J) "**HAZARDOUS MATERIALS**" means and includes flammable explosives, radioactive materials, asbestos and substances defined as hazardous materials, hazardous substances or hazardous wastes in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), and regulations promulgated thereunder.
- (K) "**LOAN**" means the loan made pursuant to this Loan Agreement.
- (L) "**LOAN AGREEMENT**" or "**AGREEMENT**" means this loan agreement and its exhibits, appendices, schedules and attachments (which are by this reference incorporated herein), and any amendments thereto.
- (M) "**LOAN AMOUNT**" means the maximum amount DEQ agrees to loan the Borrower hereunder.

- (N) "LOAN RESERVE ACCOUNT" means the account described in ARTICLE 5(c)(2).
- (O) "LOBBYING" means influencing or attempting to influence a member, officer or employee of a governmental agency or legislature in connection with the awarding of a government contract, the making of a government grant or loan or the entering into of a cooperative agreement with such governmental entity or the extension, continuation, renewal, amendment or modification of any of the above.
- (P) "MANUAL" means CWSRF Manual for Construction Projects.
- (Q) "NET OPERATING REVENUES" means the Gross Revenues less the Operating Expenses for the Facility.
- (R) "OPERATING EXPENSES" means all direct and indirect expenses incurred for operation, maintenance and repair of the Facility, including but is not limited to administrative expenses, legal, financial and accounting expenses, insurance premiums, claims (to the extent that monies are not available from insurance proceeds), taxes, engineering expenses relating to operation and maintenance, payments and reserves for pension, retirement, health, hospitalization, and sick leave benefits, and any other similar expenses to be paid to the extent properly and directly attributable to operations of the Facility. Operating expenses include an appropriate amount for reserves for repair and replacement of the Facility based on the expected life of the collection, treatment and disposal facilities.
- (S) "OUTSTANDING LOAN AMOUNT" means, as of any date, the sum of all disbursements to the Borrower hereunder less the sum of all Loan principal payments received by DEQ.
- (T) "PROJECT" means the facilities, activities or documents described in ARTICLE 1(E) and (F).
- (U) "REPAYMENT PERIOD" means the repayment period specified in ARTICLE 1(H) which shall not in any event exceed twenty (20) years after the Completion Date.
- (V) "SRF" means the Water Pollution Control Revolving Fund established under ORS 468.427, also known as the State Revolving Fund.
- (W) "STATE" means the State of Oregon.

ARTICLE 10: MISCELLANEOUS

(A) **NOTICES.** All notices, payments, statements, demands, requests or other communications under this Loan Agreement by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered by personal delivery, by certified mail, return receipt requested, or by facsimile transmission, and, if to the Borrower, delivered, addressed or transmitted to the location or number listed in ARTICLE 1(B), and if to DEQ, delivered, addressed or transmitted to:

Clean Water State Revolving Fund Loan Program
Water Quality Division

Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204-1390
Fax (503) 229-6037

or to such other addresses or numbers as the parties may from time to time designate. Any notice or other communication so addressed and mailed shall be deemed to be given five (5) days after mailing. Any notice or other communication delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against DEQ, such facsimile transmission must be confirmed by telephone notice to DEQ's CWSRF Program Coordinator. Any notice or other communication by personal delivery shall be deemed to be given when actually delivered.

(B) WAIVERS AND RESERVATION OF RIGHTS.

(1) DEQ's waiver of any breach by the Borrower of any term, covenant or condition of this Loan Agreement shall not operate as a waiver of any subsequent breach of the same or breach of any other term, covenant, or condition of this Loan Agreement. DEQ may pursue any of its remedies hereunder concurrently or consecutively without being deemed to have waived its right to pursue any other remedy.

(2) Nothing in this Loan Agreement affects DEQ's right to take remedial action, including, but not limited to, administrative enforcement action and action for breach of contract against the Borrower, if the Borrower fails to carry out its obligations under this Loan Agreement.

(C) TIME IS OF THE ESSENCE. The Borrower agrees that time is of the essence under this Loan Agreement.

(D) RELATIONSHIP OF PARTIES. The parties agree and acknowledge that their relationship is that of independent contracting parties, and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Loan Agreement.

(E) NO THIRD PARTY BENEFICIARIES. DEQ and the Borrower are the only parties to this Loan Agreement and are the only parties entitled to enforce the terms of this Loan Agreement. Nothing in this Loan Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Loan Agreement. Any inspections, audits, reports or other assurances done or obtained, or approvals or consents given, by DEQ are for its benefit only for the purposes of administering this Loan and the CWSRF Program.

(F) ASSIGNMENT. DEQ shall have the right to transfer the Loan or any part thereof, or assign any or all of its rights under this Loan Agreement, at any time after execution of this Loan Agreement upon written notice to the Borrower. Provisions of this Loan Agreement shall inure to the benefit of DEQ's successors and assigns. This Loan Agreement or any interest therein may be assigned or transferred by the Borrower only with DEQ's prior written approval

(which consent may be withheld for any reason), and any assignment or transfer by the Borrower in contravention of this ARTICLE 10(F) shall be null and void.

(G) DEQ NOT REQUIRED TO ACT. Nothing contained in this Loan Agreement requires DEQ to incur any expense or to take any action hereunder in regards to the Project.

(H) FURTHER ASSURANCES. The Borrower and DEQ agree to execute and deliver any written instruments necessary to carry out any agreement, term, condition or assurance in this Loan Agreement whenever a party makes a reasonable request to the other party for such instruments.

(I) VALIDITY AND SEVERABILITY; SURVIVAL. If any part, term, or provision of this Loan Agreement or of any other Loan document shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by either party, the validity of the remaining portions, terms and provisions shall not be affected, and all such remaining portions, terms and provisions shall remain in full force and effect. Any provision of this Agreement which by its nature or terms is intended to survive termination, including but not limited to ARTICLE 5(E), shall survive termination of this Agreement.

(J) NO CONSTRUCTION AGAINST DRAFTER. Both parties acknowledge that they are each represented by and have sought the advice of counsel in connection with this Loan Agreement and the transactions contemplated hereby and have read and understand the terms of this Loan Agreement. The terms of this Loan Agreement shall not be construed against either party as the drafter hereof.

(K) HEADINGS. All headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Loan Agreement.

(L) ATTORNEYS' FEES AND EXPENSES. In any action or suit to enforce any right or remedy under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, to the extent permitted by law.

(M) CHOICE OF LAW; DESIGNATION OF FORUM; FEDERAL FORUM.

(1) 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.

(2) 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.

(3) Notwithstanding ARTICLE 10(M)(2), 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 ARTICLE 10(M)(3) 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 ARTICLE 10(M)(3) 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.

(N) **COUNTERPARTS.** This Loan Agreement may be executed in any number of counterparts, each of which is deemed to be an original, but all together constitute but one and the same instrument.

(O) **ENTIRE AGREEMENT; AMENDMENTS.** This Loan Agreement constitutes the entire agreement between the Borrower and DEQ on the subject matter hereof, and it shall be binding on the parties thereto when executed by all the parties and when all approvals required to be obtained by DEQ have been obtained. This Loan Agreement, including all related Loan documents and instruments, may not be amended, changed, modified, or altered without the written consent of the parties.

CITY OF NEWBERG

By: _____
Authorized Officer

Date

Typed Name: _____

Title: _____

**STATE OF OREGON ACTING BY AND THROUGH ITS
DEPARTMENT OF ENVIRONMENTAL QUALITY**

By: _____
Neil Mullane, Water Quality Administrator

Date

Approved as to Legal Sufficiency by
The Attorney General's Office

Lynn T. Nagasako, Senior AAG
E-mail approval 10/28/10
LN

Date

APPENDIX A: REPAYMENT SCHEDULE

Due Date	Pmt#	----- PAYMENT -----				Principal Balance
		Principal	Interest	Fees	Total	
						11,409,645
12/1/2011	1	0	202,600	0	202,600	11,409,645
6/1/2012	2	220,102	164,299	57,048	441,449	11,189,543
12/1/2012	3	223,272	161,129	0	384,401	10,966,271
6/1/2013	4	226,487	157,914	54,831	439,232	10,739,784
12/1/2013	5	229,748	154,653	0	384,401	10,510,036
6/1/2014	6	233,056	151,345	52,550	436,951	10,276,980
12/1/2014	7	236,412	147,989	0	384,401	10,040,568
6/1/2015	8	239,817	144,584	50,203	434,604	9,800,751
12/1/2015	9	243,270	141,131	0	384,401	9,557,481
6/1/2016	10	246,773	137,628	47,787	432,188	9,310,708
12/1/2016	11	250,327	134,074	0	384,401	9,060,381
6/1/2017	12	253,932	130,469	45,302	429,703	8,806,449
12/1/2017	13	257,588	126,813	0	384,401	8,548,861
6/1/2018	14	261,297	123,104	42,744	427,145	8,287,564
12/1/2018	15	265,060	119,341	0	384,401	8,022,504
6/1/2019	16	268,877	115,524	40,113	424,514	7,753,627
12/1/2019	17	272,749	111,652	0	384,401	7,480,878
6/1/2020	18	276,676	107,725	37,404	421,805	7,204,202
12/1/2020	19	280,660	103,741	0	384,401	6,923,542
6/1/2021	20	284,702	99,699	34,618	419,019	6,638,840
12/1/2021	21	288,802	95,599	0	384,401	6,350,038
6/1/2022	22	292,960	91,441	31,750	416,151	6,057,078
12/1/2022	23	297,179	87,222	0	384,401	5,759,899
6/1/2023	24	301,458	82,943	28,799	413,200	5,458,441
12/1/2023	25	305,799	78,602	0	384,401	5,152,642
6/1/2024	26	310,203	74,198	25,763	410,164	4,842,439
12/1/2024	27	314,670	69,731	0	384,401	4,527,769
6/1/2025	28	319,201	65,200	22,639	407,040	4,208,568
12/1/2025	29	323,798	60,603	0	384,401	3,884,770
6/1/2026	30	328,460	55,941	19,424	403,825	3,556,310
12/1/2026	31	333,190	51,211	0	384,401	3,223,120
6/1/2027	32	337,988	46,413	16,116	400,517	2,885,132
12/1/2027	33	342,855	41,546	0	384,401	2,542,277
6/1/2028	34	347,792	36,609	12,711	397,112	2,194,485
12/1/2028	35	352,800	31,601	0	384,401	1,841,685
6/1/2029	36	357,881	26,520	9,208	393,609	1,483,804
12/1/2029	37	363,034	21,367	0	384,401	1,120,770
6/1/2030	38	368,262	16,139	5,604	390,005	752,508
12/1/2030	39	373,565	10,836	0	384,401	378,943
6/1/2031	40	378,943	5,457	1,895	386,295	0
TOTALS		11,409,645	3,784,593	636,509	15,830,747	
REQUIRED LOAN RESERVE:			\$ 379,856			

APPENDIX B: ESTIMATED CWSRF LOAN DISBURSEMENT SCHEDULE

Loan funds are expected to be available based on the following Project schedule:

- 10/10 - 12/10: \$2,852,411
- 1/11 - 3/11: \$2,852,411
- 4/11 - 6/11: \$2,852,411
- 7/11 - 9/11: \$2,852,412

APPENDIX C: DBE GOOD FAITH EFFORT

At a minimum a recipient or prime contractor must make a good faith effort to utilize minority (MBE), women-owned (WBE) and small (SBE) businesses. The six steps are:

- 1) The bidder includes qualified small, minority and women's businesses on solicitation lists;
- 2) The bidder assures that small, minority, women's businesses are solicited whenever they are potential sources;
- 3) The bidder divides total requirements, whenever economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority or women's businesses;
- 4) The bidder establishes delivery schedules whenever the requirements of the work permit, which will encourage participation by small, minority and women's businesses;
- 5) The bidder uses the services and assistance of the Small Business Administration (<http://pro-net.sba.gov>) and the Minority Business Development Agency of the U.S. Department of Commerce (<http://www.mbd.gov>) to identify appropriate small, minority and women businesses; and
- 6) If the bidder awards contracts/procurements, the bidder will require the subcontractors to take all of the affirmative action steps described above. *(40 CFR Section 35.3145(d))*

Forms for documenting compliance with these requirements may be found at Tab 6 of the Manual for Construction Projects. Please note that these requirements apply to any procurement of construction, supplies, equipment or services.

Additional resources available to recipients and contractors include the following:

EPA Office of Small and Disadvantaged Business Utilization:

Phone: 206 – 553 – 2931

Web Site: www.epa.gov/osdbu

Oregon Office of Minority, Women and Emerging Small Business

350 Winter Street N.E., Room 300

Salem, OR 97301-3878

Phone: 503 – 947 – 7922

Web Site: www.cbs.state.or.us/omweb

APPENDIX D: APPLICABLE FEDERAL AUTHORITIES AND LAWS ("CROSS-CUTTERS")

ENVIRONMENTAL LEGISLATION:

Archaeological and Historic Preservation Act of 1974, PL 93-291.
Clean Air Act, 42 U.S.C. 7506(c).
Coastal Barrier Resources Act, 16 U.S.C. 3501, et seq.
Coastal Zone Management Act of 1972, PL 92-583, as amended.
Endangered Species Act 16 U.S.C. 1531, et seq.
Executive Order 11593, Protection and Enhancement of the Cultural Environment.
Executive Order 11988, Floodplain Management.
Executive Order 11990, Protection of Wetlands.
Farmland Protection Policy Act, 7 U.S.C. 4201, et seq.
Fish and Wildlife Coordination Act, PL 85-624, as amended.
National Historic Preservation Act of 1966, PL 89-665, as amended.
Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended.
Wild and Scenic Rivers Act, PL 90-542, as amended.
Federal Water Pollution Control Act Amendments of 1972, PL 92-500.

ECONOMIC LEGISLATION:

Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended.
Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including
Executive Order 11738, Administration of the Clean Air Act and the Federal Water
Pollution Control Act with Respect to Federal Contracts, Grants or Loans.

SOCIAL LEGISLATION:

The Age Discrimination Act of 1975, Pub. L. No. 94-135, 89 Stat. 713, 42 U.S.C. §6102 (1994).
Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 252, 42 U.S.C. §2000d (1988).
Section 13 of PL 92-500; Prohibition against Sex Discrimination under the Federal Water Pollution
Control Act.
Rehabilitation Act of 1973, Pub. L. No. 93-1123, 87 Stat. 355, 29 U.S.C. §794 (1988), including
Executive Orders 11914 and 11250).
Executive Order 12898, Environmental Justice in Minority Populations

MISCELLANEOUS AUTHORITY:

Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 92-646.
Executive Order 12549 and 40 CFR Part 32, Debarment and Suspension.
Disclosure of Lobbying Activities, Section 1352, Title 31, U.S. Code.

APPENDIX E: DAVIS-BACON PROVISION

Part 1

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice,

trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be

greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Part 2

Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient shall, upon the request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Oregon Department of Environmental Quality and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

DATE ACTION REQUESTED: February 7, 2011

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

SUBJECT: A Proclamation recognizing Coach Chris Casey for his individual accomplishments and the Aloha High School Football Team in winning the State Championship for 2010

Contact Person (Preparer) for this Motion: **Becky Green, HR Manager**
Dept.: **Administration**

RECOMMENDATION:

Approve a Proclamation recognizing Coach Chris Casey for his individual accomplishments and the Aloha High School Football Team in winning the State Championship for 2010.

EXECUTIVE SUMMARY:

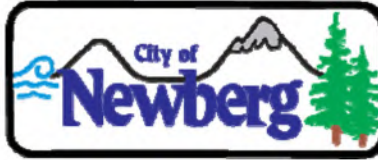
On December 11, 2010, in the State championship series, the Aloha High School Football team defeated their opponent Tualatin High School with a score of 34-13 to finish their season with 8 wins and 1 loss. Coach Chris Casey was then named the Metro League Coach of the Year and on December 29, 2010 Coach Chris Casey was named Oregon 6A Schools Coach of the Year. The City of Newberg would like to recognize both Coach Chris Casey and his team for these accomplishments.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

This supports the Council's desire to be an active participant in the community by reaching out and recognizing the importance of education and leadership of today's youth through sports.



PROCLAMATION

A PROCLAMATION RECOGNIZING COACH CHRIS CASEY FOR HIS INDIVIDUAL ACCOMPLISHMENTS AND THE ALOHA HIGH SCHOOL FOOTBALL TEAM IN WINNING THE STATE CHAMPIONSHIP FOR 2010

Whereas, this year's Aloha High School Football team is coached by former Newberg native Chris Casey and has brought unprecedented recognition to the city of Newberg; and

Whereas, Coach Chris Casey is a graduate of Newberg High School Class of 1976 followed by attending college at Mt. Hood Community College and then graduating from Linfield College where he played football at both colleges; and

Whereas, Coach Chris Casey then taught and coached at The Dalles High School, Linfield College in McMinnville (which won the 1986 National Football Championship), and at Whitworth College in Spokane prior to going to Aloha High School; and

Whereas, the Aloha High School Football team had a regular season record of 8 wins and 1 loss, then proceeded to the 2010 Oregon High School Football Playoffs where they won their next four games against Barlow High School, Lincoln High School from Portland, Roseburg High School, and Lake Oswego High School; and

Whereas, the team advanced to the State Finals at Reser Stadium in Corvallis on the Oregon State University campus on December 11, 2010, and beat their opponent Tualatin High School with a score of 34-13; and

Whereas, with the win against Tualatin High School the team won the 2010 State Championship honors and Coach Chris Casey was named the Metro League Coach of the Year as well as being bestowed the honor of the Oregon 6A Schools Coach of the year.

NOW, THEREFORE, IT IS PROCLAIMED by Mayor Bob Andrews and the City Council of the City of Newberg, Oregon congratulates **Newberg native Coach Chris Casey and his Aloha High School Football Team** for their outstanding performance during the football season. All of the citizens of Newberg are very proud of these outstanding accomplishments and join together to celebrate this history making victory and the honors bestowed on Coach Chris Casey.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Newberg to be affixed on this 7th day of February, 2011.

Bob Andrews, Mayor

Supplemental Material for
Order No. 2011-0030
Staff Report and Ex-Parte Contact Material



MEMORANDUM

Date: February 2, 2011

To: Mayor Andrews, Newberg City Councilors

From: Barton Brierley, AICP
Planning and Building Director

RE: Report from neighborhood meeting and additional ex parte contact

Attached is the report from our meetings with the applicant and neighbors for your consideration at the February 7 meeting.

We also are attaching several documents that would be considered ex parte contact. At the February 7 meeting, the Council should open the hearing to accept any testimony related to the ex parte contact.

Report to Newberg City Council
Neighborhood Group and Applicant Meetings
Regarding Zone Change Application at 1103 N Meridian St
January 27, 2011

At your December 5, 2010 hearing, you heard a proposal by the Housing Authority of Yamhill County to rezone property at 1103 N Meridian St from R-1 to R-3. You heard both support for and substantial opposition to the application for various reasons. Since that time, the applicant and a group of neighbors and interested parties met several times to discuss the proposal. Housing Authority of Yamhill County remains firmly in favor of the requested zone change so they can move forward with their future development plans. The neighborhood group remains adamantly opposed to the proposed zone change.

If the Council chooses to approve the requested zone change, the group requests the following conditions be applied:

- (1) The zone change is contingent on the current owner, Housing Authority of Yamhill County, constructing a housing project on the site. If Housing Authority sells the property without constructing a housing project on the site, then the zoning will revert to the current R-1 without the conditions listed below.
- (2) The zone change requires the Housing Authority to go through design review and historic review on the housing project. During that review, the Planning Commission is directed to consider:
 - (a) A drainage plan that meets Development Code requirements.
 - (b) Requirements for installation of sidewalks and walkways adjacent to the site and along the paths to major destinations, such as improvements to the Meridian rail crossing or sidewalk infill along Meridian Street. Requirements must be proportional to the impacts.
 - (c) Plans to make the historic house visible from the street.
 - (d) Architectural designs for new buildings that complements the historic house on the property.
 - (e) Plans to preserve the existing house.
 - (f) A plan for occasional public access to the historic house, such as access during annual historic tour events or availability for scheduled tours.
 - (g) A plan for recognition of the heritage of the house and property, such as placing a placard and prominent display at the house.
 - (h) Plans to preserve as many of the existing trees on site as practical given design requirements.
 - (i) Parking management plans.
 - (j) Lighting plans.
 - (k) Plans for play areas within the complex that meet or exceed Development Code requirements.
- (3) The following will be requirements of the design review:
 - (a) Installation of fence adjacent to all private property.
 - (b) Marking curbs no-parking near driveway entrances.
- (4) Prior to submitting for design review, the applicant shall meet with interested adjacent neighbors and a representative of Spaulding Oaks Condominium Association to discuss:
 - (a) The proposed site design.

- (b) The proposed drainage and grading plan.
 - (c) The architectural design of the buildings.
- (5) The Traffic Safety Commission is directed to consider Meridian Street and whether to limit on street parking or designate no-parking areas. This review should occur in conjunction with design review. The review also is to involve the Yamhill County Transit Area and investigate the possibilities of placing a bus stop along the street, both to provide service to the area and to limit parking near driveways.

We also note that the Housing Authority is willing to give serious consideration to, but does not commit to, using the site for senior housing.

Even though these conditions have been agreed upon in principle, the neighborhood group does not in any way support the proposed zone change.

<http://www.newberggraphic.com/news/2010/December/22/Local.News/no.decision.yet.on.meridian.st.rezoning.effort/news.aspx>

No decision yet on Meridian St. rezoning effort

Newberg government — Council votes to hold issue for Jan. 3 meeting so involved parties can attempt to reach a compromise on a number of rezoning issues

- By: [Amanda Newman](#)
- Published: 12/22/2010 1:29:53 PM
-



Photo By: Gary AllenLandmark --

HAYC officials say they plan to keep the Meridian Street historic house and integrate it in their development.

A crowd turned out Monday evening for the Newberg City Council meeting expected to deliver a decision on the controversial Meridian Street rezoning request, but the decision didn't come.

With the deliberation period scarcely underway, the council unanimously voted, at the suggestion of city attorney Terry Mahr, to postpone the decision to the Jan. 3 council meeting. In the interim, there will be meetings between players on both sides of the issue, including officials from Housing Authority of Yamhill County (HAYC), which owns the property and hopes to develop it into high-density public housing; representatives of Spaulding Oaks, the retirement community across the street; neighbors and others with a stake in the game.

The goal? To attempt compromise on some issues, potentially leading to restrictions the council could put on future development of the property through a limited-use overlay, were they to approve the rezoning request.

A limited-use overlay, planning and building director Barton Brierley explained, is used to address "peculiar" aspects of a property that might otherwise preclude its rezoning.

"Maybe they could find some common ground ... This is commonly done in this type of development, where a developer may have some opposition from the neighbors," Mahr said. He explained that the process can help prevent appeals and "get a project that's more acceptable to the neighbors."

Mahr and Brierley have offered to host and facilitate the talks.

The 3.39-acre 1103 N. Meridian St. property, the site of a historic home, is currently zoned R-1 (low-density residential). HAYC has requested a change to R-3 (high-density residential), which would pave the way for a large development on the property. Under R-3 the property could potential accommodate 93 units; HAYC officials say they plan to keep the house and build about 70 units.

The issue has generated much interest throughout the community, with significant public turnout at the hearings held by the council and, previously, the Newberg Planning Commission.

Advocates cite a need for low-income housing and say the property would be ideal for it. Opponents point to traffic and drainage issues in the area and say the historic aspect of the property would be negatively impacted. Claims by both sides have been countered by the other, with HAYC officials saying development of the property would improve drainage issues and multiple Newberg residents saying low-income housing is ideal when it is spread throughout the community instead of being built in one large development.

The council's consideration of the issue has already spanned the month of December. The public hearing began Dec. 6 but was continued to Monday's meeting. The first meeting ran long due to the high number of people who signed up to testify.

In other business, the council:

- Discussed the visitor information center draft contract, which will be finalized at a later meeting.

- Unanimously adopted a city mission statement: "The city of Newberg serves its citizens, promotes safety and maintains a healthy community."

http://www.newberggraphic.com/news/2010/December/21/Opinion_Letters/dec.22.letters.to.the.editor/news.aspx

Dec. 22 Letters to the Editor

-
- Published: 12/22/2010 12:00:00 PM
-

To the editor:

The editorial headlined, “It’s in the council’s hands now,” contains much truth. The one item that it overlooks is the historic value of the property owned by HAYC. When a property of this historic significance to the city is about to be developed, there is a very short window of opportunity to salvage it and preserve it for presenting the history of the city. That window is now.

It is my belief that the citizens of Newberg should decide what is more valuable, low-income housing at this location or an educational park and heritage center at this location.

Vern Martin, Newberg

Transform historic house into heritage site

To the editor:

I am writing in support of the proposal submitted by Vern Martin concerning the property on North Meridian Street. Mr. Martin has suggested “that the Housing Authority of Yamhill County should donate the property at 1103 N Meridian St. to the city of Newberg for the purpose of establishing an educational park on the grounds and a Newberg heritage center/museum in the historic home.” He has stated this to the city council and in a letter to the editor of this newspaper.

At the intersection of 12th and Mission streets in Salem is the Deepwood Estate. Deepwood is a Queen Anne style home built in 1894. It sits on four acres of beautiful gardens and is used in similar fashion to what Mr. Martin has suggested.

In the 1940s, I attended Bush Grade School across Mission Street from Deepwood. In those days the house could not be seen. I don’t even know if it was being lived in, unless of course it was occupied by the ghosts that we youngsters were told about.

I don’t know who owns it today, but it is operated by the Friends of Deepwood. It is on the National Register of Historic Homes and in 2002 Sunset Magazine named it as one of the “Best in the West” sites.

Wouldn’t that be nice for Newberg?

Ron Staples, Newberg

January 1, 2011, Editorial in The Newberg Graphic



Photo By: Gary Allen

2010: What a Year

The Newberg Graphic, in no particular order of importance, takes a look back at some of the events and people that shaped the year

- Published: 1/1/2011 12:00:00 PM
- Last Updated: 1/3/2011 10:04:50 AM

Proposed rezoning of historic property incites controversy

When news surfaced midway through the summer that Housing Authority of Yamhill County (HAYC) had purchased the property at 1103 N. Meridian St., the site of a historic home, and hoped to develop it into high-density public housing, neighbors and other members of the Newberg community took issue with the plan. HAYC applied for rezoning of the property from low- to high-density residential. The Newberg Planning Commission recommended approval of the request and sent it to the Newberg City Council in December. The council's hearing has been twice continued to a later date, most recently to allow the various involved parties to meet and attempt to reach consensus on some issues. It is next scheduled to resume at Monday's meeting. Advocates cite a need for low-income housing and say the property would be ideal for it. Opponents point to traffic and drainage issues in the area and say the historic aspect of the property would be negatively impacted.

January 5, 2011, Letters to the Editor in The Newberg Graphic

Parties can come together for an equitable solution

- Published: 1/5/2011 12:00:00 PM

To the editor:

I would like to applaud the Newberg City Council for taking the initiative to call together the two groups involved in the controversy over the zone change application on the property at 1103 N. Meridian St.

A fine group of people met at city hall on Dec. 30 and had a very productive meeting. The result of that meeting was to suggest to the city council that they postpone a decision on the zone change application until the council meets in early February.

That would give both groups a little time to explore things that could result in a solution that would be good for the Housing Authority of Yamhill County, the Newberg Citizen's Alliance and the neighbors who live close to this property. This would result in a win-win situation for all concerned and would be a rather rare occurrence in the political arena.

Is it still possible for elected or appointed government agencies to get together and come to an agreement that satisfies both parties? I would like to think that this is a possibility. The Newberg City Council has taken the first step by getting everyone together to talk. Now it is up to both sides to come up with a satisfactory solution to the controversy.

For that to happen without going further with the struggle through the political process, a property needs to be found that could be offered to HAYC for their project of building affordable housing in Newberg. Does such a property exist? I think that it does if we can just locate the property and make it available to swap with HAYC for the property at 1103 N. Meridian St.

If the city council takes the recommendation of this ad hoc group and postpones their decision until February, then the window of opportunity to preserve this vital piece of Newberg's history will have been enlarged a bit. It will close eventually, but at the present time it would still be open.

If the citizens of Newberg have any solutions to offer in this matter, everyone involved would certainly like to know of them.

Verne Martin, Newberg

From: [Denise Bacon](#)
To: [Norma Alley](#);
Subject: Fwd: 1103 N Meridian rezoning issue
Date: Sunday, January 30, 2011 7:21:28 PM

Another one

Denise Bacon
503-840-5023
503-537-2602

Begin forwarded message:

From: Scot Cook <scot_cook@yahoo.com>
Date: January 30, 2011 7:12:37 PM PST
To: Denise Bacon <denise.bacon@newbergoregon.gov>
Subject: 1103 N Meridian rezoning issue

January 30, 2010

Greetings, my name is Scot Cook. My wife Stacey and I have lived in Newberg for 16+ years. We have the privilege of both owning a home (at 511 N. Meridian) and operating a business (as a licensed psychologist at 211 N. Meridian) on North Meridian Street. We are writing to express a strong opposition to the plan to rezone and develop the property at 1103 N. Meridian. While many excellent arguments against the plan have already been articulated, several factors jump out;

Rezoning a piece of property from R-1 to R-3 in one bold stroke smacks of poor community planning.

It fails to appropriately protect the integrity and history of the existing house and property.

Traffic will undoubtedly increase, possibly a great deal more than anticipated. Seventy units with multiple occupants each would suggest far more vehicles than the

30-40 per rush hour number cited. The current traffic study seems, to put it mildly, uninformed.

The development of a 70+ unit complex would definitely change the climate, feel, and livability of this part of Newberg. It seems to contradict the mission statement of the Newberg Planning Division "To help shape a well rounded community." Our community must be founded upon solid planning and citizen input, and this appears contrary to those principles.

Please know that my family and I are strongly in support of addressing the housing needs within our community.

It is not the concept of affordable housing we oppose, but rather the particularities and process we see happening here. There is need for further study, discussion, and consideration in this matter.

To be clear, we ask that you keep the property at 1103 North Meridian, zoned at R-1.

Thank you for your service to our community.

Scot and Stacey Cook
511 North Meridian
Newberg, OR

Supplemental Material for
Ordinance No. 2011-2733
Attachment “A”

**List of Changes Made to Ordinance No. 2011-2733
(Changes received from Council on January 3, 2011)**

Reference	Change
1.05.050 Definitions	Replaced servants with household employee
2.05.060 Filing	Replaced voters with electors
2.05.110 Residence defined	Replaced voter with elector (twice in sentence)
2.20.060 Bond for city officials	Replaced gender references to be gender neutral
3.25.050	Replaced gender references to be gender neutral
2.15.400 Powers and duties	Replaced sewer with wastewater
2.20.050 Retirement contribution	Removed entirely to address at another time
2.30.090 Jury list	Replaced registered voters to electors
2.35.100 Procedure	Replaced gender reference to be gender neutral
3.10.010 Definitions	Replaced gender reference to be gender neutral
3.10.120 Refunds	Replaced gender reference to be gender neutral
3.10.140 Administration	Moved the comma from behind during to behind examine
8.15.160 Unlawful businesses	Added the ORS title
9.20.020 Children confined in vehicles	Replaced gender references to be gender neutral
9.25.170 Clearing of litter from private and adjacent public places by city.	Replaced gender references to be gender neutral and removed some legalese language of hereunder and hereby
10.05.070 Public danger	Replaced gender references to be gender neutral
12.05.050	Replaced gender references to be gender neutral
13.10.070 Wastewater connection procedures	Replaced sewer with wastewater
13.10.190 Revocation of permit	Replaced sewer with wastewater
13.10.240 Customer classes	Replaced sewer with wastewater
13.10.260 Customers outside city	Replaced sewer with wastewater
14.05.050 Adoption of state codes	Removed capitalization of director for consistency
14.05.260 Establishment of fees	Removed the word within
15.05.030 Definitions	Added the definition of Family to replace servant with household employee
15.302.030	Replaced gender reference to be gender neutral
15.340.030	Replaced director with planning and building director or designee
Table C-1	Removed year references in the ordinances
15.510.080 Easements of utilities	Replaced sewer with wastewater and removed the space between storm and water to be one word
Chapter 3.10 Transient Room Tax	Change the language throughout the Code to Transient Lodging Tax to be consistent with ORS

NEWBERG CITY COUNCIL MEETING INFORMATION

Meeting Date: February 7, 2011

Prepared by: Norma Alley

Councilors	Roll Call	MOTION Topic: Consent Calendar – Res. 2926, Res. 2929, Proclamation, Minutes	ORDER NO. 2011-0030 Topic: Meridian St. Rezoning ACCEPT EX-PARTE CONTACT INFO INTO THE RECORD	ORDER NO. 2011-0030 Topic: Approve Meridian St. Rezone APPROVE MOTION WITHDRAWN	ORDER NO. 2011-0030 Topic: Meridian St. Rezone DELIBERATE AND UPDATED STAFF REPORT ON THE 2/22/2011 MEETING AGENDA	ORDINANCE NO. 2011-2733 Topic: Recodification	RESOLUTION NO. 2011-2928 Topic: Obtaining Animal Shelter Value Engineering Estimate	MOTION Topic: Fund Up to \$4,000.00 to the 2011 Camellia Festival
ANDREWS, Bob, Mayor	X	YES	YES		YES	YES	YES	YES
BACON, Denise	X	YES	YES		YES	YES	YES	YES
HOWARD, Ryan	X	YES	YES		YES	YES	YES	YES
McKINNEY, Stephen	X	YES	YES		NO	YES	YES	YES
RIERSON, Bart	X	YES	YES	WITHDRAWN	YES	YES	YES	YES
SHELTON, Marc	X	YES	YES	WITHDRAWN	YES	YES	YES	YES
WITHERSPOON, Wade	X	YES	YES		NO	YES	YES	YES
ROLL CALL VOTES		YES: 7 NO: 0 Absent: 0 Abstain: 0	YES: 7 NO: 0 Absent: 0 Abstain: 0	YES: NO: Absent: Abstain:	YES: 5 NO: 2 Absent: 0 Abstain: 0	YES: 7 NO: 0 Absent: 0 Abstain: 0	YES: 7 NO: 0 Absent: 0 Abstain: 0	YES: 7 NO: 0 Absent: 0 Abstain: 0
Department Prepared Action Item:			Planning	Planning	Planning	Administration	Engineering	
MOTION (1st/2nd):		Rierson/ Bacon	Shelton/ Rierson	Rierson/ Shelton	Shelton/ Bacon	Shelton/ McKinney	Wither spoon/ Shelton	Andrews/ Bacon



Newberg City Council

Work Session

February 7, 2011

Fire Department Ambulance Rate Increase Presentation

OUR MISSION

To preserve and protect lives and property in the most effective and efficient manner possible.



“Serious About Service”



- ▣ Fire Protection
- ▣ Emergency Medical Services (Fire-Based EMS)
- ▣ Fire Prevention / Life Safety Education
- ▣ Technical Rescue

Service Delivery Model

- ▣ Combination Model (Career + Volunteers)
- ▣ Two Stations: Downtown(20) Springbrook(21)
- ▣ Duty Staffing: 8 FFs / 4 ea station / 6 FF-PMs
- ▣ 2 Medic Units (per ASA) / 1 at each station
- ▣ Call/need based staffing of other units
- ▣ 85% incidents handled by On-Duty staff
- ▣ Volunteers / Mutual-Aid for “Major” incidents
- ▣ 2010 = 4,000+ incidents (1 call every 2hrs)
- ▣ Each year around 600 overlapping calls
- ▣ Over 200 times / 3+ overlapping calls

Why On-Duty Staffing?



- ▣ *Survivability for victims in fires and during medical emergencies is directly related to the timely arrival of properly trained and equipped responders.*
- ▣ 4 to 6 minutes = Flashover in fire/ Permanent brain damage from lack of oxygen for medical

Fire-Based EMS



- ▣
- ▣ Most popular model for EMS transport (ambulance) in the USA.
- ▣ Public benefits by higher level of service for both fire protection and EMS.
- ▣ “Fee for Service” reduces tax funding .
(28% of on-duty staffing paid by EMS Fund.)
- ▣ 2010 = NFD transported 2,241 patients (6 per day)

Private for Profit EMS?

- ▣ Emergency Medical Services (9-1-1) is an essential component of public safety, similar to law enforcement and firefighting.
- ▣ Should an essential component of public safety be provided by an agency whose sole purpose is to earn a profit?
- ▣ Employees of private/for profit agency are not “public servants”.
- ▣ For public’s well being, fire service provides at least “first response”. Should a profit driven agency benefit from this tax provided public service?

Ambulance Rate Background



- ▣ Last NFD rate adjustment in 2007.
- ▣ No adjustments for inflation.
- ▣ Medicare Fee Schedule implemented in 2002 has greatly reduced allowable reimbursements.
- ▣ Reduced NFD by \$604 per transport (\$1,000).
- ▣ Medicare/Medicaid patients = 65% NFD.
- ▣ Not a local issue = USA Today, Dec. 29, 2010: “Emergency Services Raise Ambulance Fees”

Impacts of Reduced Revenue

- ▣ Unable to keep up with cost of services.
- ▣ Shrinking EMS Fund contingency.
- ▣ Ambulance replacement - should be at least \$45K / this FY only \$18K.



Proposed Increased Rates

- ▣ Current NFD base rate = \$1,000
- ▣ Current regional average (fire-based) = \$1,321
- ▣ Effective March 1, 2011 = \$1,200
- ▣ Effective March 1, 2012 = \$1,440
- ▣ Annual review by Finance Director – may recommend increase by rate of inflation.
- ▣ Estimate increase of \$150,000+ in EMS revenue should you adopt this proposal.



Questions? Thank You



City Council Meeting

Date: February 7, 2011

Re: Resolution No. 2011-2928

No: Comments from Jan Floren

Good evening council and Mayor,

I'm Janet Floren, the presiding President of the Newberg Animal Shelter Friends organization.

I want to let the council know that NASF endorses the resolution 2928 to authorize LCG Pence Construction to incorporate some of their value engineering suggestions into the new animal shelter design in order to reduce the cost. We are in agreement that it is necessary to bring the building cost in alignment with our available funding.

We've been working with the City Shelter Subcommittee for the past 3 or 4 years, looking at possible property and building designs. We are very close to achieving a long-term goal, to build a new animal shelter.

As of January 27th, the NASF treasurer reported the construction fund at: \$400,269.31. We are in the process of organizing this years events. We hope to grow this fund with events and incentive campaigns. We are committed to building a new shelter.

Thank You.