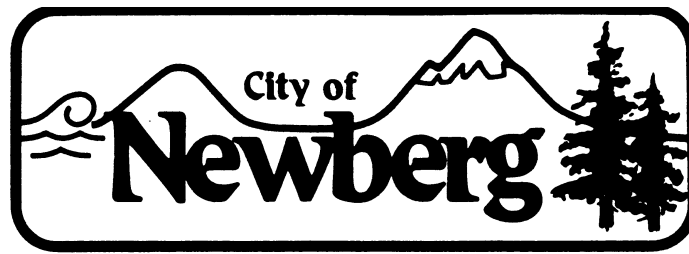


City Manager
(503) 537-1207

City Attorney
(503) 537-1206



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

**CITY OF NEWBERG
CITY COUNCIL WORK SESSION
DECEMBER 1, 2008
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 AND TO HEAR REPORTS FROM BOARDS, COMMISSIONS, AND COMMITTEES. NO ACTION WILL BE TAKEN ON THE AGENDA ITEMS.

STAFF PRESENTATION ON GOLF CARTS AND SLOW MOVING VEHICLES.

DATED THIS 19TH DAY OF NOVEMBER, 2008.

DANIEL J. DANICIC
CITY MANAGER

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 the city recorder, at (503) 537-1283. For TTY service please call (503) 554-7793.

● CITY MANAGER'S OFFICE: e-mail: nctymgr@ci.newberg.or.us Fax: 537-5013 ●
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"

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

**CITY OF NEWBERG
CITY COUNCIL AGENDA
DECEMBER 1, 2008
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; an opportunity to speak for no more than 5 minutes per speaker allowed)

VI. CONSENT CALENDAR

1. Consider a motion denying **Resolution No. 2008-2783** resolving the status of this Resolution regarding the relationship of the 2007 Urban Reserve Area to the Southeast Transportation Plan. (Pgs. 5-8)
2. Consider a motion approving **Resolution No. 2008-2816** authorizing the city manager to execute an amendment to the agreement with GSI Water Solutions in the amount of \$26,508.00. (Pgs. 9-10)
3. Consider a motion approving **Resolution No. 2008-2819** transferring jurisdiction of a portion of Second Street from Yamhill County to the City of Newberg. (Pgs. 11-16)
4. Consider a motion approving **Resolution No. 2008-2820** accepting the Total Maximum Daily Load Implementation Plan as ordered and accepted by the Oregon Department of Environmental Quality. (Pgs. 17-21)
5. Consider a motion approving City Council Minutes for November 3, 2008. (Pgs. 23-27)

VII. PUBLIC HEARING

1. Consider a motion approving **Ordinance No. 2008-2703** establishing provisions for utility access to and use of rights-of-way. (Pgs. 29-48)
(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.

2. Consider a motion approving **Ordinance No. 2008-2708** removing the temporary freeze on zone changes, comprehensive plan designation changes, and amendments to the Urban Growth Boundary and Urban Reserve area for land in Newberg's Bypass Interchange Overlay District. (Pgs. 49-63)
(Legislative Hearing)

VIII. CONTINUED BUSINESS

IX. NEW BUSINESS

Consider a motion approving **Resolution No. 2008-2818** accepting the annual audit report and financial statements for fiscal year ended June 30, 2008. (Pgs. 65-83)

X. COUNCIL BUSINESS

XI. EXECUTIVE SESSION

XII. ADJOURNMENT

INDEX OF ORDERS, ORDINANCES AND RESOLUTIONS:

ORDERS: None

ORDINANCES:

Ordinance No. 2008-2703 establishing provisions for utility access to and use of rights of way and repeal Ordinance No. 1493 and City Code Sections 96.30 and 96.31 and establishing an additional subsection under Chapter 96 (Streets and Sidewalks) to include the provisions of this ordinance.

Ordinance No. 2008-2708 revising the Newberg Comprehensive Plan and Development Code to Remove a Temporary Freeze On Zone Changes, Comprehensive Plan Designation Changes, And Amendments To The Urban Growth Boundary And Urban Reserve Area For Land In the Bypass Interchange Overlay Districts

RESOLUTIONS:

Resolution No. 2008-2783 declaring the City has fulfilled the condition it had placed on the Urban Reserve Expansion requiring the adoption of the Southeast Transportation Plan.

Resolution No. 2008-2816 authorizing the City Manager to execute a Professional Services Agreement amendment with GSI Water Solutions in the amount of \$26,508.

Resolution No. 2008-2818 accepting the annual audit report and financial statements for fiscal year ended June 30, 2008.

Resolution No. 2008-2819 accepting jurisdiction of a portion of Second Street from Yamhill County.

Resolution No. 2008-2820 accepting the Total Maximum Daily Load Implementation Plan as Required and Accepted by the Oregon Department of Environmental Quality.

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.

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

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: 2008, December 1

Order _____ Ordinance _____ Resolution XX Motion _____ Information _____
No. No. No. 2008-2783

SUBJECT: Resolve status of Resolution No. 2008-2783, regarding relationship of 2007 URA to Southeast Transportation Plan

Contact Person (Preparer) for this Ordinance: Elaine Taylor, AICP

Dept.: Planning and Building

File No.: UGB 05-015 and URA 05-010
(if applicable)

RECOMMENDATION:

Deny Resolution No. 2008-2783, a resolution declaring that the City's condition on the Urban Reserve expansion requiring the Southeast Transportation Plan to be adopted has been fulfilled.

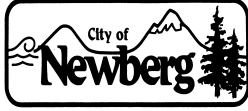
BACKGROUND:

1. The purpose of the requested action is simply to close out a previously tabled resolution.
2. On October 15, 2007, the Newberg City Council adopted a new Urban Reserve area, with the Southeast area included subject to adoption of the Southeast Transportation Plan. On November 19, 2007, City Council adopted the Southeast Transportation Plan, subject to adoption of the same by Yamhill County. Both documents were then sent to Yamhill County for public hearings and County adoption.
3. On April 24, 2008, the Board of Yamhill County Commissioners "acknowledged receipt but declined to adopt" the Southeast Transportation Plan. While they were willing to adopt the 2007 URA, they wanted to "unlink" it from the Southeast Transportation Plan. They referred the matter back to the City Council for resolution, continuing their hearing to May 14, 2008.
4. City staff prepared a Request for Council Action for the May 5, 2008 City Council meeting, suggesting several alternative courses of action to the City Council. City staff drafted Resolution No. 2008-2783, saying that since the City had adopted the Southeast Transportation Plan, it had met its self-imposed requirement to make URA adoption contingent on adoption of the Southeast Transportation plan. Rather than adopt the resolution, the City Council requested a joint meeting with the Board of Yamhill County Commissioners to discuss the issue. The City Council tabled the motion until after a joint meeting with the Yamhill County Commissioners.
5. At their joint meeting with the Yamhill County Commissioners on June 6, 2008, the City Council decided to repeal their adoption of the 2007 URA and the Southeast Transportation Plan, and to readopt the URA without reference to the Southeast Transportation Plan. Those actions were taken on July 7, 2008, and the County Commissioners adopted the same 2007 URA and Findings on July 16, 2008.
6. On July 7, 2008, the Council adopted Ordinance No. 2008-2697 and 2008-2698, which satisfied the issue. This negated the need to consider Resolution 2008-2783.

7. Resolution No. 2008-2783 is still tabled, and needs Council action.

STRATEGIC ASSESSMENT: Denying the attached draft resolution from May 5, 2008 would take it off the table.

Attachment: Draft Resolution No. 2008-2783



RESOLUTION No. 2008-2783

**A RESOLUTION DECLARING THE CITY HAS FULFILLED THE
CONDITION IT HAD PLACED ON THE URBAN RESERVE
EXPANSION REQUIRING THE ADOPTION OF THE SOUTHEAST
TRANSPORTATION PLAN**

RECITALS:

1. In adopting the 2007 Urban Reserve Area (Ordinance 2007-2681), the City Council made inclusion of the areas covered by the Southeast Transportation Plan contingent upon “approval of the Southeast Transportation Plan,” but did not stipulate whose approval was required.
2. The Board of Yamhill County Commissioners has expressed support for the 2007 Urban Reserve area (URA), but wished to separate the relationship between the URA and the Southeast Transportation Plan.
3. The City of Newberg has heard the County’s concerns regarding access to 99W pre-bypass, and, like the County, desires a good solution to these access issues. The City has received a state grant and is about to start updating its Transportation System Plan to address all areas within the 2007 Urban Reserve. The Southeast area’s transportation issues could be reviewed during that process to identify options that are more effective than the plan that the City adopted, but with lower costs and less adverse impact than the plan recommended by the Newberg Urban Area Management Commission (NUAMC).

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. In adopting the Southeast Transportation Plan by Ordinance No. 2007-2682, the City of Newberg has fulfilled its self-imposed requirement that adoption of the 2007 URA be contingent upon adoption of the Southeast Transportation Plan.
2. The City of Newberg intends to seek additional solutions to the 99W access issues, with the goal of improving on the access provided in the Southeast Transportation Plan as adopted, but at lower public cost and with fewer adverse impacts than were found in the draft plan as recommended by the Newberg Urban Area Management Commission (NUAMC), with the goal of eventual co-adoption by Yamhill County. At that time, the city and county can

jointly adopt amendments to their transportation plans for use when properties in the Southeast area are brought into the Newberg Urban Growth Boundary.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 6, 2008.

ADOPTED by the City Council of the City of Newberg, Oregon, this 5th day of May, 2008.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 8th day of May, 2008.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

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

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: 2008, December 1

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2008-2816

SUBJECT: Authorize the City Manager to execute a professional services agreement amendment with GSI Water Solutions in the amount of \$26,508.

Contact Person (Preparer) for this
Resolution: **Howard Hamilton**
Public Works Director

Dept.: **Public Works Department**

File No.:

RECOMMENDATION:

Adopt **Resolution No. 2008-2816** authorizing the City Manager to execute a professional services agreement amendment with GSI Water Solutions in the amount of \$26,508.

BACKGROUND:

The City of Newberg entered into a professional services agreement with GSI Water Solutions (formerly GSI), authorized by Resolution 2006-2631, on March 20, 2006 for \$149,707. This professional services agreement was to design improvements to the springs required by the Oregon Drinking Water Program.

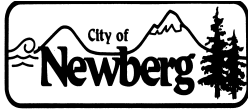
During the course of this project a number of unforeseen difficulties with the existing easements were encountered. Additionally, there were underground utilities that would have interfered with construction and construction access, landowners that denied additional easements for power and communication, and the added requirements imposed by the Drinking Water Program for continuous monitoring at each of the three spring locations.

In order to address these issues and new restrictions, the consultant's scope of work was revised. Engineering staff performed some of the additional work in the areas of easement relocation, pipeline realignment and identifying options for negotiations with landowners. Some of the additional work will be paid by reallocation of funds within the agreement.

Two previous amendments were authorized for work not specified in the original professional services agreement. Amendment #1 provided for a wetlands assessment of the construction areas (\$3,520). Amendment #2 provided for design of the electrical service requirements (\$7,500). This, amendment #3, is required for the successful completion of this project.

FISCAL IMPACT: Approval of this third amendment will increase the overall professional services agreement by \$37,528 to a total agreement amount of \$187,235. There is adequate funding in the 2008/09 capital improvement program budget.

STRATEGIC ASSESSMENT: The Drinking Water Program requires these improvements in order for us to meet current minimum water quality standards. This is the most economical method of providing these improvements.



RESOLUTION No. 2008-2816

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT AMENDMENT WITH GSI WATER SOLUTIONS IN THE AMOUNT OF \$26,508

RECITALS:

1. The City of Newberg has a contract with GSI Water Solutions for the design of required upgrades to Snider, Skelton and Oliver Springs. Due to changes required by the Oregon Drinking Water Program, the scope of the original contract has changed requiring additional design effort to provide the constant monitoring.
2. Negotiations with affected landowners to secure easements required changes to alignment and footprint of the upgrades. The result of these changes also impacted the design time and effort.
3. The consultant and City staff negotiated an adjusted scope of work, whereby, the inspection responsibilities will be shifted to city staff. Therefore, original funding can be reallocated in order to minimize the amount of additional funding required to complete the design project.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

Authorize the City Manager to approve amendment #3 in the amount of \$26,508 to allow completion of the design of the springs upgrade project.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: December 2, 2008.

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day December 2008.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 4th day of December 2008.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

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

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: 2008, December 1

Order ____ Ordinance ____ Resolution XX Motion ____ Information ____
No. No. No. 2008-2819

SUBJECT: Transfer of jurisdiction of a portion of Second Street from Yamhill County to the City of Newberg.

Contact Person (Preparer) for this
Resolution: Paul Chiu
Senior Engineer

Dept.: Public Works Department
File No.:

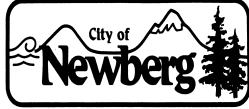
RECOMMENDATION: Adopt **Resolution No. 2008-2819** accepting jurisdiction over Second Street from State Highway 219 to South Springbrook Road, subject to the conditions enumerated therein.

BACKGROUND: On July 16, 2007 the City requested, through Resolution No. 2007-2720, that Yamhill County surrender to the City, jurisdiction over a portion of Second Street. The street segment under consideration is that portion of Second Street from its intersection with the centerline of State Highway 219, easterly along the centerline of Second Street to its intersection with the centerline of South Springbrook Road. This action was requested as part of the project for Second Street reconstruction. (Exhibit "A")

The Yamhill County Commission, following a duly noticed public hearing, passed Board Order No. 07-844 (Exhibit "B"), offering to transfer jurisdiction of a portion of Second Street to the City. Board Order No. 07-844 stipulates that the transfer shall be deemed accepted by the City on the enactment of appropriate municipal legislation. Following the transfer, the City shall be responsible for all maintenance and repair of the road segment and for the financing thereof.

FISCAL IMPACT: The City does plan to improve this road segment after accepting the jurisdictional transfer. Construction is anticipated in summer 2009. The 2008/09 adopted budget does have adequate funding for the design portion of this project. The construction costs will be budgeted in 2009/10 budget. The City will pay the initial construction cost and be partially reimbursed by other sources. The Oregon Transportation Commission will be providing grant funds for one-half of the estimated improvement costs up to \$286,191. Yamhill County bike and pedestrian funds will contribute \$100,000. Approximately \$85,000 will be paid by Climax Portable Machine Tools, Inc. for their obligation towards the street frontage improvement. The City will pay the remaining cost, which is estimated at around \$100,000, from SDC funds. The City will be responsible for the future maintenance of this road segment.

STRATEGIC ASSESSMENT: It is appropriate that streets within the City limits of the City of Newberg be under the jurisdiction of the City. This will assure that, as they are improved, the improvements will be in compliance with City standards.



RESOLUTION No. 2008-2819

A RESOLUTION ACCEPTING JURISDICTION OF A PORTION OF SECOND STREET FROM YAMHILL COUNTY

RECITALS:

1. On July 16, 2007 the City requested, through Resolution No. 2007-2720, that Yamhill County surrender to the City jurisdiction over that portion of Second Street from State Highway 219 to South Springbrook Road. This action was requested as part of the project for Second Street reconstruction.
2. Thereafter, the County adopted Board Order No. 07-655 on July 18, 2007. The Order authorized the initiation of a formal process under ORS 373.270 to transfer to the City jurisdiction over the above-mentioned portion of Second Street, and to hold a public hearing on the matter.
3. On August 28, 2007, the duly noticed public hearing was held in the Yamhill County Courthouse on the proposed transfer of jurisdiction. No testimony opposed to the proposed transfer of jurisdiction was received.
4. In a unanimous vote (one member's absence being excused) on September 5, 2007, the Board passed Board Order No. 07-844, which found, based on the record of the public hearing and the request of the City of Newberg, a transfer of jurisdiction to be in the best interests of the citizens of Yamhill County. The Board Order constituted a formal offer to transfer jurisdiction. The operative part of the Board Order provided as follows:
 - A. Yamhill County hereby offers to surrender jurisdiction over the following portion of Second Street to the City of Newberg, Oregon:

That portion of Second Street from its intersection with the centerline of State Highway 219 easterly along the centerline of Second Street to its intersection with the centerline of South Springbrook Road.
 - B. On the City of Newberg's enactment of appropriate municipal legislation accepting the County's offer to surrender jurisdiction and in accordance with ORS 373.270(7), the offer shall be deemed accepted with the following effect:
 - The jurisdiction of the County over the subject road or for its improvement, construction or repair shall cease.
 - The full and absolute jurisdiction over the subject road for all purposes of repair, construction, improvement and the levying and collection of assessments therefore shall vest in the City of Newberg.

- The City of Newberg shall have the same jurisdiction over the subject road as by its charter and the laws of the State are given or granted it over any of the public streets and alleys of the City.
5. The conditions of Board Order No. 07-844 are satisfactory to the City of Newberg. It is now necessary and proper that Board Order No. 07-844 and the offer contained therein be accepted by appropriate legislation of this Council as the governing body of the City of Newberg.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. That the offer of Yamhill County, Oregon, as contained in Board Order No. 07-844, dated September 5, 2007, to surrender jurisdiction to the City of Newberg over the following described portion of Second Street is hereby accepted: that portion of Second Street from its intersection with the centerline of State Highway 219 easterly along the centerline of Second Street to its intersection with the centerline of South Springbrook Road.
2. That this resolution shall constitute notice to all persons concerned from the date of this resolution that the jurisdiction of Yamhill County over the portion of the road described above shall cease. This resolution shall further constitute notice that the full and absolute jurisdiction over this road segment shall vest in the City of Newberg for all purposes of repair, construction, improvement, and levying and collection of assessments therefore.
3. That a true copy of this resolution certified to be such by the City Recorder of the City of Newberg be forwarded to the Yamhill County Board of Commissioners.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: December 2, 2008.

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of December 2008.

Norma I. Alley, City Recorder

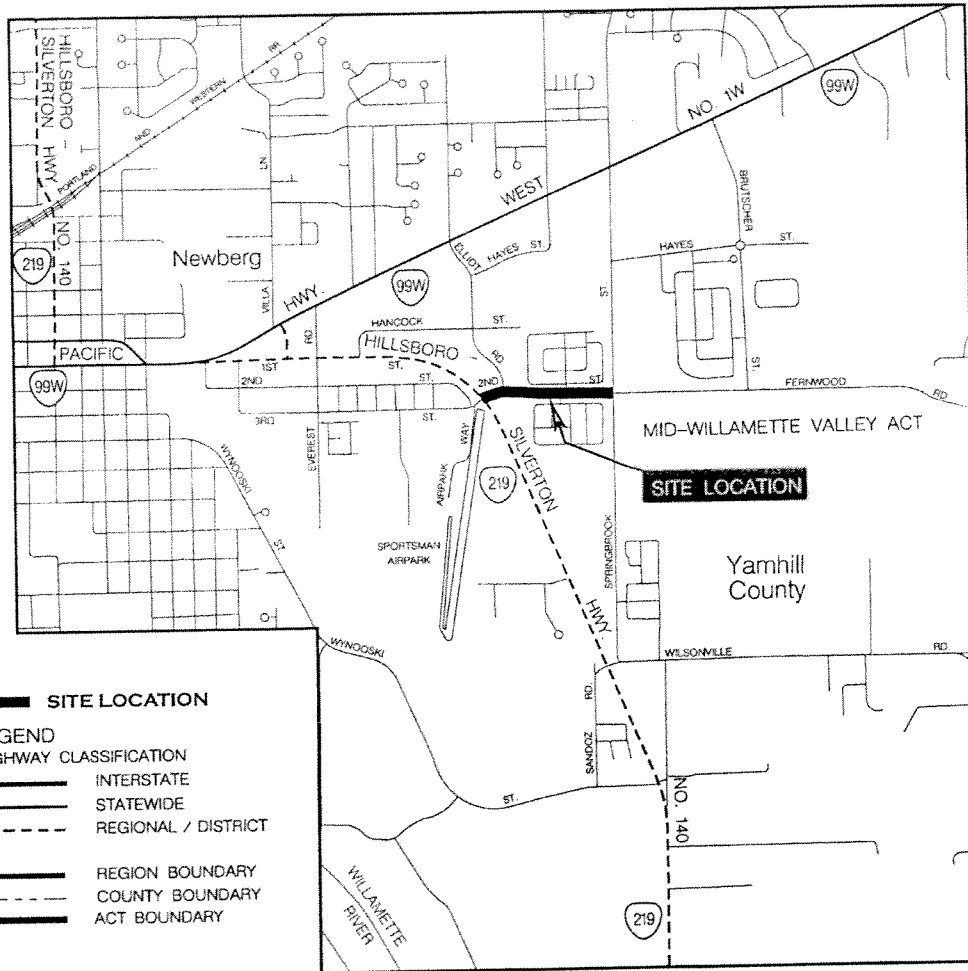
ATTEST by the Mayor this 4th day of December 2008.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through _____ Committee at ____ / ____ /2008 meeting. Or, None.
(committee name) (date) (check if applicable)

IMMEDIATE OPPORTUNITY FUND PROJECT LOCATION ODOT REGION 2



- LEGEND**
- STATE HIGHWAY CLASSIFICATION**
- INTERSTATE
 - STATEWIDE
 - REGIONAL / DISTRICT
- REGION BOUNDARY**
- REGION BOUNDARY
 - COUNTY BOUNDARY
 - ACT BOUNDARY

**SECOND STREET IMPROVEMENTS, CITY OF NEWBERG
CLIMAX PORTABLE MACHINE TOOLS, INC.**

"This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information."

SCALE 0 0.5 MILES
SPECIAL PROJECT # 2023
AUGUST 2007

PRODUCED BY ODOT - GIS UNIT - (503)986-3154

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

RECEIVED
SEP 10 2007

In the Matter of the Adoption)
of an Order offering to Surrender)
Jurisdiction to the City of Newberg)
over a Portion 2nd Street.)

BOARD ORDER 07-844

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on September 5, 2007 commissioners ~~Kathy George~~, Mary P. Stern and Leslie Lewis being present.

mg

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. ORS 373.270 governs the transfer of jurisdiction over county roads within cities. The City of Newberg requested the county to initiate a process to surrender jurisdiction over a portion of 2nd Street. A copy of the city's request is attached to Board Order 07-655. Board Order 07-655 was adopted July 18, 2007 to initiate a process to surrender jurisdiction over a portion of 2nd Street to the City of Newberg. The subject portion of 2nd Street is described in the operative part of this Board Order. A public hearing was set for August 29, 2007 to consider the proposed transfer. Public notice of the hearing was given in accordance with ORS 373.270(2). On August 28, 2007 the public hearing was held in Room 32 of the Yamhill County Courthouse on the proposed transfer of jurisdiction. The question before the Board was whether a transfer of jurisdiction over the subject roads was necessary, expedient or in the best interest of the county. No testimony opposed to the proposed transfer of jurisdiction was received.

B. Based upon the record of the public hearing and the request of the City of Newberg, the Board finds that a transfer of jurisdiction over a portion of 2nd Street to the City of Newberg is in the best interest of the county. NOW, THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

1. Yamhill County hereby offers to surrender jurisdiction over the following portion of 2nd Street:

That portion of 2nd Street between Springbrook Road and Highway 219.

2. Upon the City of Newberg's enactment of appropriate municipal legislation accepting the county's offer to surrender jurisdiction, and in accordance with ORS 373.270(7) (2005 replacement part), the offer shall be deemed accepted with the following effect:

- a. The jurisdiction of the county over the subject road or for their improvement, construction or repair shall cease.
- b. The full and absolute jurisdiction over the subject road for all purposes of repair, construction, improvement and the levying and collection of assessments therefor shall vest in the City of Newberg.
- c. The City of Newberg shall have the same jurisdiction over the subject road as by its charter and the laws of the state are given or granted it over any of the public streets and alleys of the city.

DONE at McMinnville, Oregon on September 5, 2007.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN
County Clerk

(excused)
Chair KATHY GEORGE

By: Carol Ann
Deputy CAROL ANN



Mary P. Stern
Commissioner MARY P. STERN

FORM APPROVED BY:

John M. Gray, Jr.
JOHN M. GRAY, JR.
Yamhill County Legal Counsel

Leslie Lewis
Commissioner LESLIE LEWIS

whitec:\pw\surrender\newberg07\2ndstreet\boofferintotransfer09-05-07.wpd

Certified to be a true copy
by Annell Britt
of Yamhill County

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: 2008, December 1

Order ____ Ordinance ____ Resolution XX Motion ____ Information ____
No. No. No. 2008-2820

SUBJECT: Accept the Total Maximum Daily Load (TMDL) Implementation Plan as ordered and accepted by the Oregon Department of Environmental Quality (ODEQ).

Contact Person (Preparer) for this
Resolution: **Howard Hamilton**
Public Works Director

Dept.: **Public Works Department**
File No.:

RECOMMENDATION: Adopt **Resolution No. 2008-2820** accepting the Total Maximum Daily Load (TMDL) Implementation Plan as ordered and accepted by the Oregon Department of Environmental Quality (ODEQ).

BACKGROUND: In October 2006, the Oregon Department of Environmental Quality (ODEQ) ordered the City of Newberg to prepare a Total Maximum Daily Load (TMDL) Implementation Plan. A TMDL determines how much pollution can be added to a river without exceeded water quality standards. The Implementation Plan addresses how the City of Newberg will improve the water quality in the tributaries feeding the Willamette River.

The City entered into a contract with URS Corporation, on May 23, 2007, to provide consulting services necessary to create the TMDL Implementation Plan.

In March of 2008, the Plan was submitted to ODEQ for their review. ODEQ reviewed the Plan and returned it to the City to make the recommended changes. The City resubmitted the plan in July of 2008.

On October 17, 2008, ODEQ accepted the TMDL Implementation Plan with some minor changes. See Exhibit "A" for a summary of the Plan.

FISCAL IMPACT: Accepting the TMDL Implementation Plan has no direct fiscal impact. However, some of the actions proposed in the Plan will have a fiscal impact and will be subject to the City's standard budgeting procedures at the time that are to be implemented.

STRATEGIC ASSESSMENT: The primary goal of this TMDL Implementation Plan was to develop a management plan, consisting of a series of Best Management Practices (BMPs), that would minimize contributions of various pollutants from areas within the City of Newberg's jurisdiction and to meet the TMDLs set forth by ODEQ. Exceeding acceptable levels of these pollutants is a concern because waterways that are too warm will not support healthy salmon and trout; bacteria-contaminated water can cause illness in humans; and elevated levels of mercury in Willamette Basin fish have resulted in health advisories to limit the amount of fish that can be safely consumed. By implementing this plan the City of Newberg is helping to contribute to a cleaner and safer Willamette River.

Attachment: Exhibit "A" - TMDL Implementation Plan Executive Summary

Willamette TMDL (Total Maximum Daily Load) Implementation Plan Executive Summary

Total Maximum Daily Loads

The Oregon Department of Environmental Quality (ODEQ) has set Total Maximum Daily Loads (TMDLs) for water bodies located in the Willamette Basin. Any agency or municipality that has legal authority over activities or areas that are sources of pollutants that impact water quality are known as Designated Management Agencies (DMAs). DMAs that are responsible for areas draining to a water body with a TMDL must develop an Implementation Plan describing activities or Best Management Practices (BMPs) to be undertaken to address TMDLs (ODEQ 2006). The City of Newberg, located in the Middle Willamette watershed, must comply with this requirement. ODEQ issued a letter to the City of Newberg in October 2006 notifying the City of the requirement (Appendix A). This document serves as the TMDL Implementation Plan for the City of Newberg, specifically addressing Willamette River TMDLs of temperature, bacteria, and mercury.

This document is arranged in three sections. This first section introduces the TMDL Implementation Plan and provides background on the Willamette TMDL, an overview of the TMDL plan, background information on the City of Newberg and Middle Willamette Reach, goals of this TMDL Implementation Plan, and an overview and requirements of the Middle Willamette TMDL Implementation Plan set by ODEQ. The second section covers bacteria and mercury, which is further broken down into subsections covering pollutant information, plans of the City to address the TMDL issues, how and when the strategies will be implemented, and how the implementation will be monitored and measured. The third and final section covers temperature, with similar subsections and implementation details. Unlike bacteria and mercury, temperature is not linked directly with stormwater runoff and is therefore discussed in a separate section.

The Federal Clean Water Act (CWA) of 1977 gave authorization to the U.S. Environmental Protection Agency (EPA) to restore and maintain water quality in all water bodies within the United States. In response to the CWA, the EPA designated certain state agencies, ODEQ for the State of Oregon, to develop water quality standards, perform water quality monitoring to understand current conditions, determine sources of pollution, and develop TMDLs as a tool to improve water quality and restore the beneficial uses of surface waters. When a water body is found not to meet water quality standards, it is first placed on the 303(d) list as an impaired water body, followed by the development of a TMDL.

TMDLs define the amount of each regulated pollutant that can be present in a water body without causing water quality criteria to be exceeded, alternatively described as the loading capacity of a water body. Extensive water quality monitoring and modeling is done to establish the difference between the loading capacity and the current pollutant load which is translated into a percent or numeric pollution reduction goal, or excess load. TMDLs are then set to meet the water quality standards for the water body. Implementation plans are a DMA's response to the TMDL describing management strategies that they will implement and monitor to mitigate excess loading of TMDL pollutants (ODEQ 2006).

In September 2006, DEQ issued a TMDL for nine of the 12 subbasins within the Willamette River Basin in an effort to protect and restore the beneficial uses of the Willamette River. This TMDL is the largest TMDL undertaken by the DEQ thus far. Mercury, bacteria, and temperature have been identified as problematic constituents for the Willamette River. Additional pollutants have been identified as problematic for specific tributaries and portions of the mainstem Willamette River; these pollutants are dissolved oxygen, turbidity, and toxics and are not covered under the scope of this plan as they are not listed of concern in areas covered by Newberg (DEQ 2006).

The Willamette TMDL addresses pollutant loadings from point sources, such as wastewater treatment plants and industrial dischargers, as well as for non-point sources. Stormwater is considered both a point source when flowing through a conveyance system and a non-point source when flowing overland to creeks and rivers. Industrial dischargers are addressed by DEQ through 1200Z permits. TMDL requirements for wastewater discharges will be implemented through the Wastewater NPDES permits at the time of renewal of the permits. The City of Newberg has an NPDES Permit for their Wastewater Treatment Plant. The City also has a 200-J Permit for discharge of filter backwash water from their Water Treatment Plant. This discharge is not used often since the City recycles most of their backwash filter water. This document only addresses management strategies associated with point and non-point source stormwater runoff and temperature requirements for creeks within the City of Newberg.

Project Goals

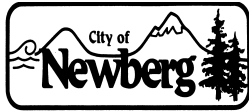
The primary goal of this TMDL Implementation Plan is to develop a management plan, consisting of a series of BMPs, that will minimize contributions to surface waters for heat energy (temperature), mercury, and bacteria from areas within the City of Newberg jurisdiction and to meet the TMDLs set forth by ODEQ. Exceeding acceptable levels of these pollutants is a concern because waterways that are too warm will not support healthy salmon and trout; bacteria-contaminated water can cause illness in humans; and elevated levels of mercury in Willamette Basin fish have resulted in health advisories to limit the amount of fish that can be safely consumed.

Municipal Separate Storm Sewer System (MS4) NPDES Phase II permits, addressing stormwater activities within a City, are required of municipalities that have populations larger than 10,000 residents, or a density of greater than 12,000 residents per square mile. With a threshold initially set at 50,000 population, Newberg was not included in the list of cities required to apply for a Phase II permit. However, with the lower population threshold, it is expected that Newberg will be required to apply and implement a Phase II permit in the future when ODEQ updates their list of Phase II permittees. Although the exact timing is unknown, this may occur in 5 to 10 years. As such, both the City and ODEQ are interested in developing the TMDL in a format that uses the six minimum measures for managing stormwater runoff from urban areas required of Phase II permittees. As described in Section 2, the City developed a stormwater management plan (SWMP) in anticipation of the Phase II permit when it is required.

TMDL Implementation Plan Requirements

The Willamette River TMDL is for the parameters bacteria, mercury, and temperature. ODEQ created a Water Quality Management Plan (WQMP) for the Willamette Basin TMDL in 2006 that is meant to provide the framework for the management strategies to attain and maintain water quality standards within the Willamette Basin (OAR 340-042-0040-(4)). Per the WQMP, these strategies are to be submitted by DMAs to the ODEQ as a TMDL Implementation Plan as per OAR 340-042-0080(3). The TMDL Implementation Plans needs to identify activities that the City is currently conducting, or planning to implement, to address the TMDL parameters and minimize their effects on receiving water quality.

For the full report, please contact Tabrina McPherson in the Public Works Department at 503.537.1273 or click [here](#) to open the document or visit the City’s website at <http://ci.newberg.or.us/page.asp?id=157>.



RESOLUTION No. 2008-2820

A RESOLUTION ACCEPTING THE TOTAL MAXIMUM DAILY LOAD (TMDL) IMPLEMENTATION PLAN AS REQUIRED AND ACCEPTED BY THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY (ODEQ)

RECITALS:

1. In October 2006, the Oregon Department of Environmental Quality (ODEQ) ordered the City of Newberg to prepare a Total Maximum Daily Load (TMDL) Implementation Plan.
2. On May 23, 2007, the City entered into contract with URS Corporation to provide consulting services necessary to create the TMDL Implementation Plan.
3. On October 17, 2008, ODEQ accepted the TMDL Implementation Plan with some minor changes.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The Newberg City Council hereby accepts the TMDL Implementation Plan as required and accepted by ODEQ and authorizes City Staff to proceed as necessary to address any and all items discussed in the Plan.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: December 2, 2008.

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of December 2008.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 4th day of December 2008.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

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

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: December 1, 2008

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

SUBJECT: Approve the minutes from the November 3, 2008, City Council Meeting.

Contact Person (Preparer) for this Motion: **Norma Alley, City Recorder**

Dept.: **Administration**

File No.:
(if applicable)

RECOMMENDATION:

Review and approve the November 3, 2008, City Council meeting for preservation and permanent retention in the City's official records.

BACKGROUND:

On November 3, 2008, the City of Newberg City Council held a public meeting. At that meeting, minutes were recorded in text.

FISCAL IMPACT: None.

STRATEGIC ASSESSMENT: None.

**CITY OF NEWBERG COUNCIL MINUTES
NOVEMBER 3, 2008
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET**

Work Session was held prior to this meeting. Presentations on police uniforms and the community survey for funding additional officers were given. No decisions were made.

I. CALL MEETING TO ORDER

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

II. ROLL CALL

Members

Present: Mayor Bob Andrews Mike Boyes Roger Currier Bob Larson
Bart Rierson Marc Shelton

Staff

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

Others

Present: Peter Backus, Jessica Cain, Richard Nilles

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, shared appreciation letters received from citizens about City staff.

V. PUBLIC COMMENTS

Mr. Peter Backus made a presentation to the Council concerning the impact that recent road improvements to Crestview Drive and Villa Road have had on his rental property. His primary complaints were in regards to a portion of his property he dedicated to the City for road improvements and the close proximity the widened road now has to his home. He shows he now has limited access to his garage and front entrance, no ability for pedestrians to walk safely in front of his house, an unfinished driveway approach, and loss of landscaping. He requested further dialog with City staff for resolution to his concerns (see official meeting packet for full report). The Mayor directed staff and the City Attorney to review the situation and prepare a report.

VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2008-2813** adopting an identity theft protection policy for the City of Newberg.

2. Consider a motion approving City Council Minutes for October 6, 2008.

MOTION: Currier/Larson to approve the Consent Calendar including **Resolution No. 2008-2813** and the City Council Minutes for October 6, 2008 as amended. (6 Yes/0 No/1 Vacant) Motion carried.

VII. PUBLIC HEARING

Consider a motion approving **Order No. 2008-0018** approving a zone change for one parcel located at 2401 E. Hancock Street from M-1 to M-2.

TIME – 7:15 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated.

Mr. Terrence Mahr, City Attorney, made the required legal statements concerning quasi-judicial process.

Mr. Barton Brierley, Planning and Building Director, presented the staff report (see official meeting packet for full report).

Councilor Roger Currier asked about the ability for small trucks to turn around in the area. Staff stated there was not really room for trucks to turn around but they could go through the site; it is currently under construction.

Councilor Bob Larson questioned if there would be sufficient space for additional parking spaces that would be required by changing the zone to M-2. Staff replied parking would be limited but the intent for use of the area would be controlled by the permit application process and the type of business would be limited; a restaurant would not be a permitted use because of the limited parking availability.

Councilor Bart Rierson asked if the only point of ingress and egress would be via E. Hancock Street. Staff replied there would also be access through the Rivermark Bank parking lot and at 99W at the north portion of the site.

Councilor Mike Boyes asked for clarification of some duplicate pages within the Council meeting packet on pages 88 and 89. Staff noted there was a duplicate page and page 88 should not be there, but the report continues from page 89 to 91.

Councilor Marc Shelton expressed concerns for the egress from the parking lot at the stoplight and the tendency to have traffic back-up; he stated he was comfortable with the type of businesses being limited by the permit process.

Councilor Rierson asked about the recommended number of parking spaces for the square footage and zoning. Staff replied it was one space per 500 sq. ft. (54 spaces for 2,700 sq. ft.) which is what the site was designed with.

Councilor Shelton had concerns for the loading dock and the type of delivery vehicles that would be allowed there. Staff stated the applicant did not envision any uses that would require semi-trucks coming in for deliveries and this would also be regulated by the permit process because large delivery vehicles would not work here.

Mayor Andrews opened public testimony.

Ms. Jessica Cain, Attorney for Gunn, Cain, & Kinney LLP, represented the applicant for the zone change. She stated she was available for questions and clarified the site was designed to address the parking and traffic criteria. She stated the request was to allow for a greater variety of leasing options for the site; there were no intentions for restaurants to be placed here.

Councilor Rierson asked about a realtor's sign in the area referring to types of use, excluding a restaurant.

Ms. Cain was not aware of any signage.

Me. Richard Nilles stated there had been some signage in front of Rivermark Bank about no access on 99W and having to go behind Izzy's Pizza; it was not relevant to this property. He added the site used to have a Portland Road address which was changed to a Hancock Street address.

Mayor Andrews closed public testimony. Mr. Mahr asked if the applicant waived the write to submit further written testimony within a seven day period.

Ms. Cain stated the applicant waived their rights.

Mr. Brierley recommended approval of the order. Mayor Andrews closed the public hearing.

Mayor Andrews noted there was a small editorial error on page 20 under the findings; the word "in" should be changed to "is". He also asked if the minutes were adopted although they were not signed in the copy within the packet. Staff stated they will not be approved until the November 13th meeting.

MOTION: Rierson/Shelton to approve **Order No. 2008-0018** approving a zone change for one parcel located at 2401 E. Hancock Street from M-1 to M-2, as corrected, and read by title only. (6 Yes/0 No/1 Vacant). Motion carried.

VIII. CONTINUED BUSINESS

None.

IX. NEW BUSINESS

None.

X. COUNCIL BUSINESS

TIME – 7:35 PM

Mayor Andrews requested council members submit their evaluation forms for the six month review of the City Manager and noted the annual evaluations for the City Attorney would be following. He also stated a drafted letter for the residents of District 5 seeking candidates to fill the vacant position has been distributed for review and comments by the City Manager.

XI. EXECUTIVE SESSION

None.

XII. ADJOURNMENT

MOTION: Currier/Shelton to adjourn at 7:50 PM (6 Yes/0 No/1 Vacant) Motion carried.

ADOPTED by the Newberg City Council this ____ day of December, 2008.

Norma I. Alley, City Recorder

ATTEST by the Mayor this ____ day of December, 2008.

Bob Andrews, Mayor

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: 2008, December 1

Order _____ Ordinance XX Resolution _____ Motion _____ Information _____
No. No. 2008-2703 No.

SUBJECT: An Ordinance establishing provisions for utility access to and use of rights of way and repeal Ordinance No. 1493 and City Code Sections 96.30 and 96.31 and establishing an additional subsection under Chapter 96 (Streets and Sidewalks) to include the provisions of this ordinance.

Contact Person (Preparer) for this Ordinance: Dawn Wilson

Dept.: City Attorney's Office

File No.:
(if applicable)

RECOMMENDATION:

Adopt Ordinance No. 2008-2703

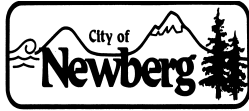
BACKGROUND:

Three "utility provider/operator" meetings were held on 05/13/08, 08/05/08, and 11/12/08 in order to give them an opportunity to be heard, have questions answered, and have issues and concerns on franchising and right-of-way usage addressed verbally and/or through this ordinance. An executive session was held on August 18, 2008, to discuss potential litigation on this ordinance. Additionally, a work session was held on October 6, 2008, to discuss the proposed ordinance and input received from utility providers/operators.

Attorney Nancy Werner of Beery, Elsner, and Hammond was hired by the City to provide legal counsel on telecommunications and draft this ordinance based on feedback received from the utility providers/operators, and the City Council, as well as ensuring compliance with federal and state regulations. Nancy has provided the City with outstanding service and has attended all meetings, except for the meeting on May 13, 2008.

FISCAL IMPACT: The privilege tax will remain at the franchise fee rate for each respective utility, which is revenue-neutral. The ordinance permits the Council to set by resolution other fees on utilities that own facilities in the right of way but do not provide service to customers in the City and therefore are not subject to the revenue-based privilege tax. The ordinance also permits the Council to set by resolution a fee for utilities that own facilities mounted on structures in the right of way, such as antennas. If either fee is enacted and there are providers in the City subject to these fees, this would generate additional revenue.

STRATEGIC ASSESSMENT: The granting of the ordinance provisions will better address the jurisdiction and management of rights of way in the City. This will result in more clear regulations for the various utilities and service providers/operators that own facilities in the City's rights of way.



ORDINANCE NO. 2008-2703

AN ORDINANCE ESTABLISHING PROVISIONS FOR UTILITY ACCESS TO AND USE OF RIGHTS OF WAY AND REPEAL ORDINANCE NO. 1493 AND CITY CODE SECTIONS 96.30 AND 96.31 AND ESTABLISHING AN ADDITIONAL SUBSECTION UNDER CHAPTER 96 (STREETS AND SIDEWALKS) TO INCLUDE THE PROVISIONS OF THIS ORDINANCE

RECITALS:

1. A franchise with Verizon for telephone services expired on April 1, 2008, but Verizon has been receptive to continuing to pay its franchise fee so that discussions and public meetings may held during the drafting of this ordinance.
2. The City currently has franchises with all other utilities. All utilities will be affected by this right-of-way ordinance, except for Comcast on its cable television services due to specific FCC regulations.
3. This ordinance is in lieu of renewing franchises and entering into new franchises with utility providers/operators, except for services pertaining to cable television.
4. Three “utility provider/operator” meetings were held on 05/13/08, 08/05/08, and 11/12/08 in order to give them an opportunity to be heard, have questions answered, and have issues and concerns on franchising and right-of-way usage addressed verbally and/or through this ordinance.
5. An executive session was held on August 18, 2008, to discuss potential litigation on this ordinance.
6. A work session was held on October 6, 2008, to discuss the proposed ordinance and input received from utility providers/operators.
7. Attorney Nancy Werner of Beery, Elsner, and Hammond LLP was hired by the City to provide legal counsel on telecommunications and draft this ordinance based on feedback received from the utility providers/operators, staff, and the City Council, as well and ensuring compliance with federal and state regulations. Nancy Werner has attended all meetings, except for the utility provider/operator meeting on May 13, 2008.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

Section 1. Purpose and Intent.

The purpose and intent of this Chapter is to:

- (A) Permit and manage reasonable access to the public rights of way of the City for utility purposes and conserve the limited physical capacity of those public rights of way held in trust by the City, consistent with applicable state and federal law;
- (B) Assure that the City's current and ongoing costs of granting and regulating access to and the use of the public rights of way are fully compensated by the persons seeking such access and causing such costs;
- (C) Secure fair and reasonable compensation to the City and its residents for permitting use of the public rights of way;
- (D) Assure that all utility companies, persons and other entities owning or operating facilities and/or providing services within the City register and comply with the ordinances, rules and regulations of the City;
- (E) Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
- (F) Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City; and
- (G) Comply with applicable provisions of state and federal law.

SECTION 2. JURISDICTION AND MANAGEMENT OF THE PUBLIC RIGHTS OF WAY.

- (A) The City has jurisdiction and exercises regulatory management over all public rights of way within the City under authority of the City charter and state law.
- (B) The City has jurisdiction and exercises regulatory management over each public right of way whether the City has a fee, easement, or other legal interest in the right of way, and whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- (C) The exercise of jurisdiction and regulatory management of a public right of way by the City is not official acceptance of the right of way, and does not obligate the City to maintain or repair any part of the right of way.
- (D) The provisions of this Chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

SECTION 3. REGULATORY FEES AND COMPENSATION NOT A TAX.

(A) The fees and costs provided for in this Chapter, and any compensation charged and paid for use of the public rights of way provided for in this Chapter, are separate from, and in addition to, any and all federal, state, local, and City charges as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

(B) The City has determined that any fee provided for by this Chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners.

(C) The fees and costs provided for in this Chapter are subject to applicable federal and state laws.

Section 4. Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive.

Cable Service: is to be defined consistent with federal laws and means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

City: the City of Newberg, an Oregon municipal corporation, and individuals authorized to act on the City’s behalf.

City Council: the elected governing body of the City of Newberg, Oregon.

City Facilities: City or publicly-owned structures or equipment located within the right of way or public easement used for governmental purposes.

License: the authorization granted by the City to a utility operator pursuant to this Chapter.

Person: includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint stock company, trust, limited liability company, association or other organization, including any natural person or any other legal entity.

Private Communications System: a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. “Private communications system” includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

Public Utility Easement: the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities.

“Public utility easement” does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities.

Right of Way: includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks or parkland. This definition applies only to the extent of the City’s right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

State: the State of Oregon.

Telecommunications Services: the transmission for hire, of information in electromagnetic frequency, electronic or optical form, including, but not limited to, voice, video or data, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. Telecommunications service includes all forms of telephone services and voice, data and video transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996.

Utility Facility or Facility: any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights of way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

Utility Service: the provision, by means of utility facilities permanently located within, under or above the rights of way, whether or not such facilities are owned by the service provider, of electricity, natural gas, telecommunications services, cable services, water, sewer, and/or storm sewer to or from customers within the corporate boundaries of the City, and/or the transmission of any of these services through the City whether or not customers within the City are served by those transmissions.

Utility Operator or Operator: any person who owns, places, operates or maintains a utility facility within the City.

Work: the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

Section 5.

Licenses.

(A) License Required.

- (1) Except those utility operators with a valid franchise agreement from the City, every person shall obtain a license from the City prior to constructing, placing or locating any utility facilities in the right of way.

(2) Every person that owns or controls utility facilities in the right of way as of the effective date of this Chapter shall apply for a license from the City within forty-five (45) days of the later of (1) the effective date of this Chapter or (2) the expiration of a valid franchise from the City, unless a new franchise is granted by the City prior to the expiration date or other date agreed to in writing by the City.

(B) License Application. The license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, and the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this Chapter.

(C) License Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the City Council in an amount sufficient to fully recover all of the City's costs related to processing the application for the license.

(D) Determination by City. The City shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this Chapter, the continuing capacity of the right of way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

(E) Franchise Agreements. If the public interest warrants, the City and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this Chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this Chapter with the review and approval of City Council. The franchisee shall be subject to the provisions of this Chapter to the extent such provisions are not in conflict with the franchise.

(F) Rights Granted.

(1) The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the Municipal Code and other applicable provisions of state or federal law, to construct, place, maintain and operate utility facilities in the rights of way for the term of the license.

(2) The license granted pursuant to this Chapter shall not convey equitable or legal title in the rights of way, and may not be assigned or transferred except as permitted in Section 6(K) of this Chapter.

(3) Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, police power or regulatory power of the City as may exist at the time the license is issued or thereafter obtained.

(G) Term. Subject to the termination provisions in Section 5(M) of this Chapter, the license granted pursuant to this Chapter will remain in effect for a term of five (5) years.

(H) License Non-Exclusive. No license granted pursuant to this Section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights of way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights of way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights of way. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

(I) Reservation of City Rights. Nothing in the license shall be construed to prevent the City from grading, paving, repairing and/or altering any right of way, constructing, laying down, repairing, relocating or removing City water or sewer facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any right of way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in Sections 7(C), (D) and (E) of this Chapter, in a manner acceptable to the City, and subject to industry standard engineering and safety codes.

(J) Multiple Services.

(1) A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and privilege tax requirements of this Chapter for the portion of the facilities and extent of services delivered over those facilities.

(2) A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate license for each utility service, provided that it gives notice to the City of each utility service provided or transmitted and pays the applicable privilege tax for each utility service.

(K) Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the City prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment. If a license is transferred or assigned, the transferee or assignee shall become responsible for all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

(L) Renewal. At least ninety (90), but no more than one-hundred eighty (180), days prior to the expiration of a license granted pursuant to this Section, a licensee seeking renewal of its license shall submit a license application to the City, including all information required in Section 5(B) and the application fee required in Section 5(C). The City shall review the application as required by Section 5(D) and grant or deny the license within ninety (90) days of submission of the application. If the City determines that the licensee is in violation of the terms of this Chapter at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed

plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

(M) Termination.

(1) Revocation or Termination of a License. The City Council may terminate or revoke the license granted pursuant to this Chapter for any of the following reasons:

- (a) Violation of any of the provisions of this Chapter;
- (b) Violation of any provision of the license;
- (c) Misrepresentation in a license application;
- (d) Failure to pay taxes, compensation, fees or costs due the City after final determination of the taxes, compensation, fees or costs;
- (e) Failure to restore rights of way after construction as required by this Chapter or other applicable state and local laws, ordinances, rules and regulations;
- (f) Failure to comply with technical, safety and engineering standards related to work in the rights of way; or
- (g) Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.

(2) Standards For Revocation Or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

- (a) The egregiousness of the misconduct;
- (b) The harm that resulted;
- (c) Whether the violation was intentional;
- (d) The utility operator's history of compliance; and/or
- (e) The utility operator's cooperation in discovering, admitting and/or curing the violation.

(3) Notice And Cure. The City shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the City Manager or designee determines that the utility operator's response is inadequate, the City Manager or designee shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked.

Section 6. Construction and Restoration.

(A) Construction Codes. Utility facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including the National Electrical Code and the National Electrical Safety Code.

(B) Construction Permits.

(1) Except as set forth in Section 6(B)(2)-(3), no person shall construct, install, or perform any work on utility facilities within the rights of way without first obtaining all required permits. The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received the license required by this Chapter, or has a current franchise with the City, and all applicable fees have been paid.

(2) In the event of an emergency, a utility operator may undertake work in the right of way without first obtaining a permit, provided that the utility operator notify the City immediately or as soon as reasonably possible, and obtain any required permits as soon as reasonably possible after cessation of the emergency. For purposes of this Section, “emergency” means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore service or prevent imminent harm to persons or property.

(3) The City Manager or designee is authorized to adopt policies setting forth additional exceptions to the permit requirement set forth in Section 6(B)(1), and to develop and revise right of way permits, standard permit conditions and construction standards necessary to insure that all work performed in the public right of way is conducted in a manner that minimizes disturbance to the public, controls quality of the repairs and otherwise protects the public interest.

(C) Unless otherwise provided in a franchise agreement or agreed to in writing by the City, a performance bond or other form of surety acceptable to the City equal to at least 100% of the estimated cost of the work within the rights of way of the City shall be provided before construction is commenced.

(1) The performance bond or other form of surety acceptable to the City shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the City, including restoration of rights of way and other property affected by the construction.

(2) The performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:

- (a) Timely completion of the work;
- (b) That the work is performed in compliance with applicable plans, permits, technical codes and standards;
- (c) Proper location of the facilities as specified by the City;
- (d) Restoration of the rights of way and other property affected by the work; and
- (e) Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

(D) A utility operator shall preserve and protect from injury other utility operators' facilities in the rights of way, the public using the rights of way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or utilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all damage to public or private property resulting from its failure to comply with the requirements of the permit authorizing the work to be completed by the utility operator or with applicable laws, ordinances and regulations.

(E) Restoration.

(1) When a utility operator, or any person acting on its behalf, does any work in or affecting any public rights of way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations, unless otherwise directed by the City and as determined by the City Manager or designee.

(2) If weather or other conditions beyond the utility operator's control do not permit the complete restoration required by the City, the utility operator shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the utility operator's sole expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.

(3) If the utility operator fails to restore rights of way or property as required in this Chapter, the City shall give the utility operator written notice and provide the utility operator a reasonable period of time not less than ten (10) days, unless an emergency or threat to public safety is deemed to exist, and not exceeding thirty (30) days to restore the rights of way or property. If, after said notice, the utility operator fails to restore the rights of way or property as required in this Chapter, the City shall cause such restoration to be made at the expense of the utility operator.

(4) A utility operator or other person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights of way or property.

(F) Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this Chapter and all other applicable state and City codes, ordinances, rules and regulations. Every utility operator shall cooperate with the City in permitting the inspection of utility facilities upon request of the City. The utility operator shall perform all testing, or permit the City to perform any testing at the utility operator's expense, required by the City to determine that the installation of the utility operator's facilities and the restoration of the right of way comply with the terms of this Chapter and applicable state and City codes, ordinances, rules and regulations.

(G) Coordination Of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the rights of way.

(1) Prior to January 1 of each year, utility operators shall provide the City with a schedule of known proposed construction activities for that year in, around or that may affect the rights of way.

(2) Utility operators shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in rights of way.

(3) All construction locations, activities and schedules within rights of way shall be coordinated as ordered by the City Manager or designee, to minimize public inconvenience, disruption, or damages.

Section 7. Location of Facilities.

(A) Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a right of way of the City, the utility operator with permission to occupy the same right of way shall locate its facilities underground. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts or to pedestals, cabinets or other above-ground equipment of any utility operator. The City reserves the right to require written approval of the location of any such above-ground equipment in the right of way where the utility operator's location or proposed location does not comply with applicable state and City codes, ordinances, rules and regulations.

(B) Interference with Rights of Way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the rights of way. All use of the rights of way shall be consistent with City codes, ordinances and regulations.

(C) Relocation of Utility Facilities.

(1) A utility operator shall, at no cost to the City, relocate its aerial utility facilities underground when required to do so in writing by the City, consistent with applicable state and federal law.

(2) A utility operator shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right of way when requested to do so in writing by the City. Nothing herein shall be deemed to preclude the utility operator from requiring or requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs, agreements or otherwise, provided that such reimbursement or compensation shall not delay the utility operator's obligation to comply with this Section in a timely manner.

(3) The City shall provide written notice of the amount of time for removal, relocation, change, alteration or undergrounding. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the City, and by the date reasonably established by the City after consultation with the affected utility operator(s), the City may cause the utility facility to be removed, relocated, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

(D) Removal of Unauthorized Facilities.

(1) Unless otherwise agreed to in writing by the City Manager or designee, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a right of way shall, at its own expense, remove the facility and restore the right of way.

- (2) A utility system or facility is unauthorized under any of the following circumstances:
- (a) The utility facility is outside the scope of authority granted by the City under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.
 - (b) The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one year. A utility operator may overcome this presumption by presenting plans for future use of the facility.
 - (c) The utility facility is improperly constructed or installed or is in a location not permitted by the license, franchise or this Chapter.
 - (d) The utility operator is in violation of a material provision of this Chapter and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City extends such time period in writing.

(E) Removal By City.

(1) The City retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the public rights of way of the City, without notice, as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency and will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations.

(2) If the utility operator fails to remove any facility when required to do so under this Chapter, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by

the City in removing the facility and obtaining reimbursement. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove shall survive the termination of the license or franchise.

(3) The City shall not be liable to any utility operator for any damage to utility facilities by the City or its contractor in removing, relocating or altering the facilities pursuant to paragraphs (B), (C) or (D) of this Section 7 or undergrounding its facilities as required by paragraph (A) of this Section 7, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those paragraphs, unless such damage arises directly from the City's negligence or willful misconduct.

(F) Engineering Designs and Plans. The utility operator shall provide the City with two complete sets of engineered plans in a form acceptable to the City showing the location of all its utility facilities in the rights of way after initial construction if such plans materially changed during construction and shall provide two updated complete sets of plans upon request of the City, but not more than once per year.

Section 8. Leased Capacity.

A utility operator may lease capacity on or in its systems to others, provided that, upon request, the utility operator provides the City with the name and business address of any lessee. The utility operator shall not be required to provide such information if the utility operator does not have such information or if disclosure is prohibited by applicable law or a valid agreement between the utility operator and the lessee.

Section 9. Maintenance.

Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

Section 10. Vacation.

If the City vacates any right of way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the right of way unless the City reserves a public utility easement, which the City shall make a reasonable effort to do provided that there is no cost or expense to the City, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty (30) days after a right of way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

Section 11. Privilege Tax.

(A) Privilege Tax.

(1) Except as set forth in Section 11(B) and (C), every utility operator shall pay the privilege tax calculated as a percentage of gross revenues earned from the provision of utility service to customers within the City at the following rates for each service provided during the term of the license:

Electric	5%
Natural Gas	5%
Telecommunications Utility (as defined in ORS 759.005)	7%
Other Telecommunications Services Providers	5%
Cable	5%
Water	5%
Sanitary Sewer	5%
Storm Sewer	5%

(2) Unless otherwise agreed to in writing by the City, the privilege tax shall be paid quarterly, in arrears, for each quarter during the term of the license, within thirty (30) days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable.

(3) For purposes of this Section 11(A), “gross revenues” means any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitations in federal or state law.

(B) **Transmission Line Fee.** A utility operator that does not earn gross revenues from the provision of utility service to customers within the City shall pay the transmission line fee set by Council resolution or set forth in the license granted by the City. The fee may be a flat fee per lineal foot of utility facilities in the City or such other fee determined by the Council after consideration of the utility operator’s use or proposed use of the right of way. Unless otherwise agreed to in writing by the City, the fee shall be paid annually, in arrears, for each year during the term of this license within thirty (30) days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable.

(C) **Attachment Fee.** A utility operator whose only facilities in the right of way are facilities mounted on structures within the right of way, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the right of way, shall pay the attachment fee set by Council resolution or set forth in the license granted by the City. The fee may be a flat fee per structure or such other fee determined by the Council after consideration of the utility operator’s use or proposed use of the right of way. Unless otherwise agreed to in writing by the City, the fee shall be paid annually, in arrears, for each year during the term of this license within thirty (30) days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable.

(D) Payments required by this Section shall be reduced by any franchise fee payments received by the City, but in no case will be less than \$0.

(E) The utility operator shall pay interest at the rate of nine percent (9%) per year for any payment due pursuant to this Section made after the due date.

(F) The privilege tax required by this Section shall be subject to all applicable limitations imposed by federal or state law. The City reserves the right to enact any and all other taxes applicable to the utilities subject to the Chapter.

Section 12. Audits.

(A) Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City, the provider of utility service shall:

(1) Furnish the City with information sufficient to demonstrate that the utility operator is in compliance with all the requirements of this Chapter and its franchise agreement, if any, including but not limited to the privilege tax payments required by Section 12 and the franchise fee required in any franchise.

(2) Make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities within the public rights of way or public utility easements. Access shall be provided within the Portland, Oregon metropolitan area unless prior arrangement for access elsewhere has been made with the City.

(B) If the City's audit of the books, records and other documents or information of the utility operator demonstrate that the utility operator has underpaid the privilege tax or franchise fee by five percent (5%) or more in any one year, the utility operator shall reimburse the City for the cost of the audit, in addition to any interest owed pursuant to Section 11(E) or as specified in a franchise.

(C) Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) days of the City's notice to the utility service provider of such underpayment.

Section 13. Insurance and Indemnification.

(A) Insurance.

(1) All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:

(a) Comprehensive general liability insurance with limits not less than:

(i) Two million dollars (\$2,000,000) for bodily injury or death to each person;

(ii) Two million dollars (\$2,000,000) for property damage resulting from any one accident; and

(iii) Two million dollars (\$2,000,000) for all other types of liability.

(b) Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000) for each person and two million dollars (\$2,000,000) for each accident.

(c) Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000).

(d) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than two million dollars (\$2,000,000).

(2) The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name or cover, or the Certificate of Insurance shall name or cover, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The Certificate of Insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy and provide the City with a replacement Certificate of Insurance as outlined in this Section. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

(3) The utility operator shall maintain on file with the City a Certificate of Insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.

(B) Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise granted or license issued pursuant to this Chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security, in a form acceptable to the City, as security for the full and complete performance of the franchise, if applicable, and compliance with the terms of this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by Section 6(C) of this Chapter for construction of facilities.

(C) Indemnification

(1) Each utility operator shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a franchise agreement. The acceptance of a license under Section 5 shall constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim the City shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

(2) Every utility operator shall also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly

or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights of way or easements in a timely manner, unless the utility operator's failure arises directly from the City's negligence or willful misconduct.

Section 14. Compliance.

Every utility operator shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the entire term of any license granted under this Chapter.

Section 15. Confidential/Proprietary Information.

If any utility operator is required by this Chapter to provide books, records, maps or information to the City that utility operator reasonably believes to be confidential or proprietary, the City shall take reasonable steps to protect the confidential or proprietary nature of the books, records or information, to the extent permitted by Oregon public records laws, provided that they are clearly designated as such by the utility operator at the time of disclosure to the City. The City shall not be required to incur any costs to protect such document, except as to the City's routine internal procedures for complying with Oregon public records law.

Section 16. Penalties.

- (A) Any violation of this Chapter shall be a Class 1 civil infraction.
- (B) Nothing in this Chapter shall be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this Chapter.
- (C) Each day's violation of a provision of this chapter constitutes a separate Class 1 civil infraction.

Section 17. Severability and Preemption.

- (A) The provisions of this Chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.
- (B) If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this Chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this Chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and

shall thereafter be binding without further action by the City.

Section 18. Application To Existing Agreements.

To the extent that this Chapter in not in conflict with and can be implemented consistent with existing franchise agreements, this Chapter shall apply to all existing franchise agreements granted to utility operators by the City.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: January 15, 2008.

ADOPTED by the City Council of the City of Newberg, Oregon, this 15th day of December, 2008, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Norma I. Alley, City Recorder

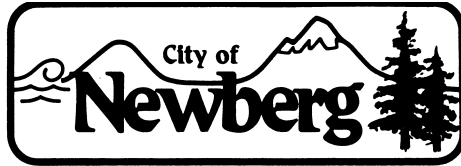
ATTEST by the Mayor this 15th day of December, 2008.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through City Council Committee at 08/18/2008 and 10/06/2008 meeting.
(committee name) (date)

Exhibit "B"
To Ordinance No. 2008-2703
(total of 2 pages)



[DEPT NAME]
City of Newberg
[ADDRESS]
[PHONE]
[FAX]
[INTERNET]

UTILITY RIGHT OF WAY LICENSE APPLICATION

Pursuant to Chapter _____ of the City Code of Ordinances, unless a person has a valid franchise from the City, every person who owns or controls any utility facilities (as defined in the Code) in, upon, beneath, over or across any public right of way (ROW), and prior to constructing, placing or locating any utility facilities in the ROW, shall obtain a license from the City.

Instructions: Please provide all information requested below, including applicable application fees, to _____ [INSERT APPLICABLE DEPARTMENT]. The application must be signed by an authorized representative of the entity requesting a license.

The City will review the information and return an executed copy of the application, if approved. The copy of the license application executed by the City will serve as the license required by Chapter _____.

For additional information, please contact _____.

Applicant Information:

1. Applicant Name (Include Corporate Name Registered with Oregon Secretary of State as well as any DBAs and Affiliates that will construct, own or control any facilities in the ROW):

2. Applicant's Authorized Contact Name(s), Title, Postal and E-Mail Address, and Phone and Facsimile Numbers: _____

3. Please describe the facilities to be constructed or operated. Include the following information: (a) the general location of the existing and/or proposed facilities; (b) a description of the approximate number of feet of plant existing and/or to be installed in the ROW; (c) whether the facilities are or will be aerial or underground; and (d) the size of facilities and equipment that are or will be located in, on, under, over, or above the ROW.

4. Check all of the following that apply regarding the services to be provided over the facilities in the ROW (see definitions in Chapter ____):

- Cable Service
- Telecommunications Services
- Natural gas
- Electricity
- Water
- Sanitary Sewer
- Storm Sewer
- Other: _____

5. Please attach documentation or a statement that demonstrates that the applicant has received or is legally qualified to receive authorizations from state and/or federal authorities necessary to conduct the activities that will require use of the ROW.

Check box if no authorizations required

By executing this License, the undersigned affirms that he/she is an authorized representative of _____ (“Licensee”) with the authority to execute this License Application. I hereby certify, on behalf of Licensee, that the information provided in the license application is true and correct as of the date hereof, and that Licensee agrees to abide by the obligations set forth in Chapter ___ of the Code of Ordinances.

By: _____
Print Name: _____
Title: _____

Date: _____

The City hereby grants to Licensee the License required pursuant to Chapter ___ of the Code of Ordinances.

By: _____
Print Name: _____
Title: _____

Date: _____

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: 2008, December 1

Order _____ Ordinance XX Resolution _____ Motion _____ Information _____
No. No. 2008-2708 No.

SUBJECT: Removal of the temporary freeze on zone changes, comprehensive plan designation changes, and amendments to the Urban Growth Boundary and Urban Reserve area for land in Newberg's Bypass Interchange Overlay District.

Contact Person (Preparer) for this Ordinance: Elaine Taylor, AICP

Dept.: Planning and Building

File No.: CPTA-07-001
(if applicable)

RECOMMENDATION:

Adopt **Ordinance No. 2008-2708**. The ordinance would:

1. End the City of Newberg's temporary freeze on changes to the Urban Reserve, Urban Growth Boundary, comprehensive plan designations, and zoning within the Interchange Overlay Districts established by Yamhill County and the City of Newberg.
2. Continue the City of Newberg's other land use restrictions within the Interchange Overlay Districts.

BACKGROUND:

While the Bypass Interchange Overlay District is a valuable tool to assure that land uses in the areas around the interchanges do not interfere with the project's ability to serve primarily longer-distance through trips, the existing policies and development code provisions are limiting the City's ability to adequately plan for the areas that will eventually surround the interchanges.

1. In September 2004, at the request of the Oregon Department of Transportation (ODOT), the City of Newberg adopted amendments to the City's Comprehensive Plan, Development Code, and Zoning Map to protect the long-term function of the proposed "Newberg-Dundee Transportation Improvement Project" bypass as an expressway, and applied a "Bypass Interchange Overlay District" to land within approximately ¼ mile of the proposed East Newberg and Oregon 219 interchange ramps. The amendments placed an interim "freeze" on comprehensive plan amendments, zone changes, urban growth boundary amendments, and urban reserve area amendments with the bypass interchange overlay district until ODOT completes Interchange Area Management Plans (IAMPS).
2. Also in September 2004, the City and ODOT signed an Intergovernmental Management Agreement (IGMA) that committed the City and ODOT to a schedule that called for completion of the draft IAMPS by Spring 2006, and anticipated that the IAMPS would be completed approximately three years after proposed bypass corridor was approved. The approval came on August 25, 2005.
3. Four years have passed since the City agreed to this temporary freeze. The City of Newberg has taken the actions that were agreed to in the IGMA, but progress has stalled on the draft IAMPS. On July 1, 2008, ODOT's representative said that the agency was developing recommendations for the interchange areas that would replace the IAMPS, yet preserve rural

land around the interchanges, and that their staff would come to Newberg around mid-August 2008 to review the proposed modifications. As of September 15, 2008, this had not occurred, and City staff requested City Council to initiate amendments to end the temporary freeze.

4. Meanwhile, the City has been making progress on the legislative expansion of its Urban Growth Boundary and Urban Reserve. ODOT's lack of progress could endanger the City's long range planning efforts. The City has delayed work on other planning projects, including adding to the City's industrial land base and providing adequate land for needed housing, because they are affected by the interim freeze.
5. On October 6, 2008, City Council adopted Resolution 2008-2811, initiating amendments to the Newberg Comprehensive Plan and Development Code to end the temporary freeze on zoning changes and comprehensive plan designation changes within the portion of the Interchange Overlay District that is within the City of Newberg, and revise City policy regarding amendments to the comprehensive plan designations, UGB and URA within the portion of the Interchange Overlay District that lies in unincorporated Yamhill County.
6. On October 15, 2008, ODOT staff came to Newberg to discuss the IAMPs and changes to the IGMAs. They agreed to work with the City on revisions to our IAMP policies and code, and have subsequently suggested a number of proposed revisions. City staff has reviewed ODOT's suggestions, and included them in the draft ordinance with minor changes.

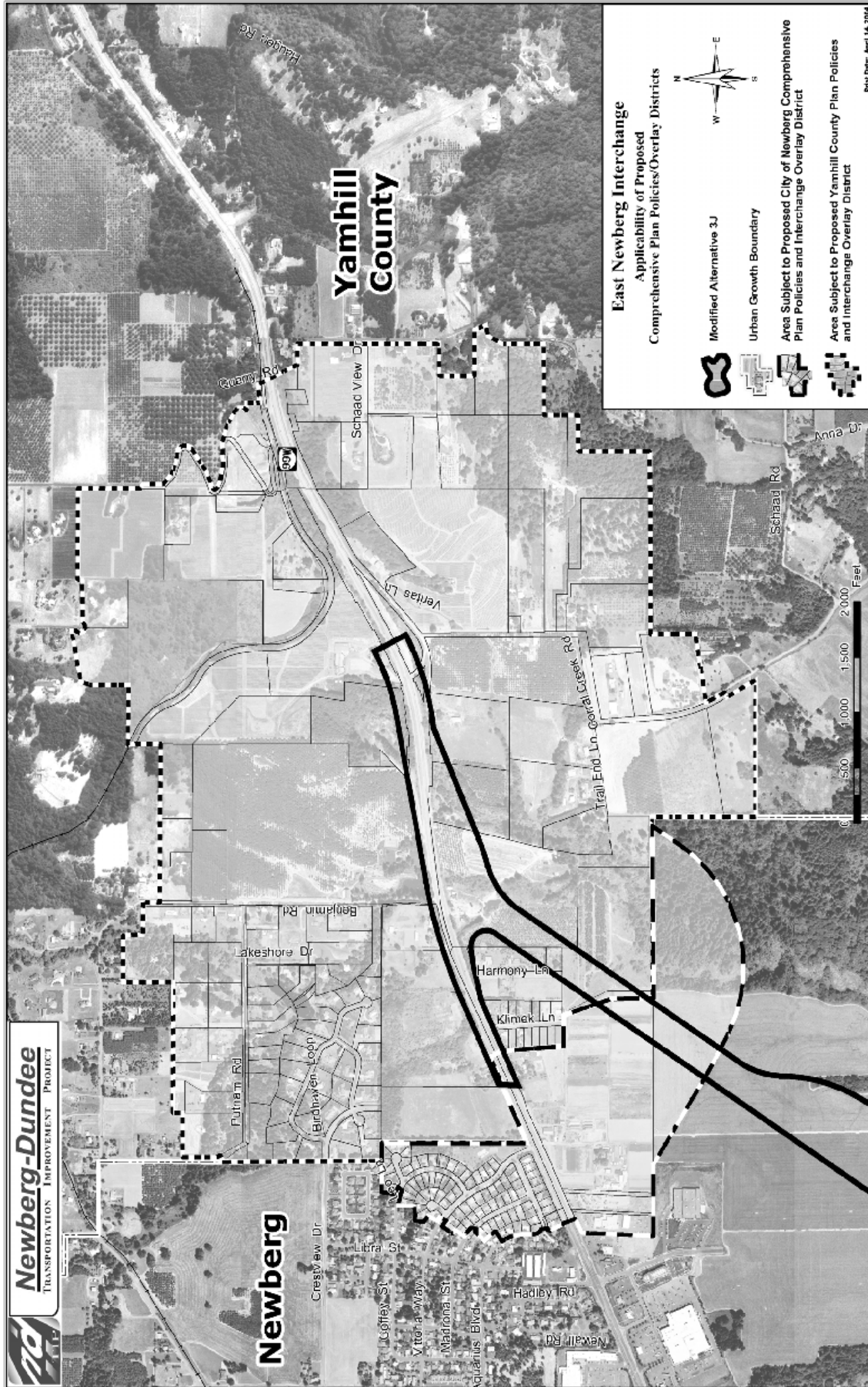
FISCAL IMPACT: No direct impact. Ending the temporary freeze will allow several planning and land use projects to proceed.

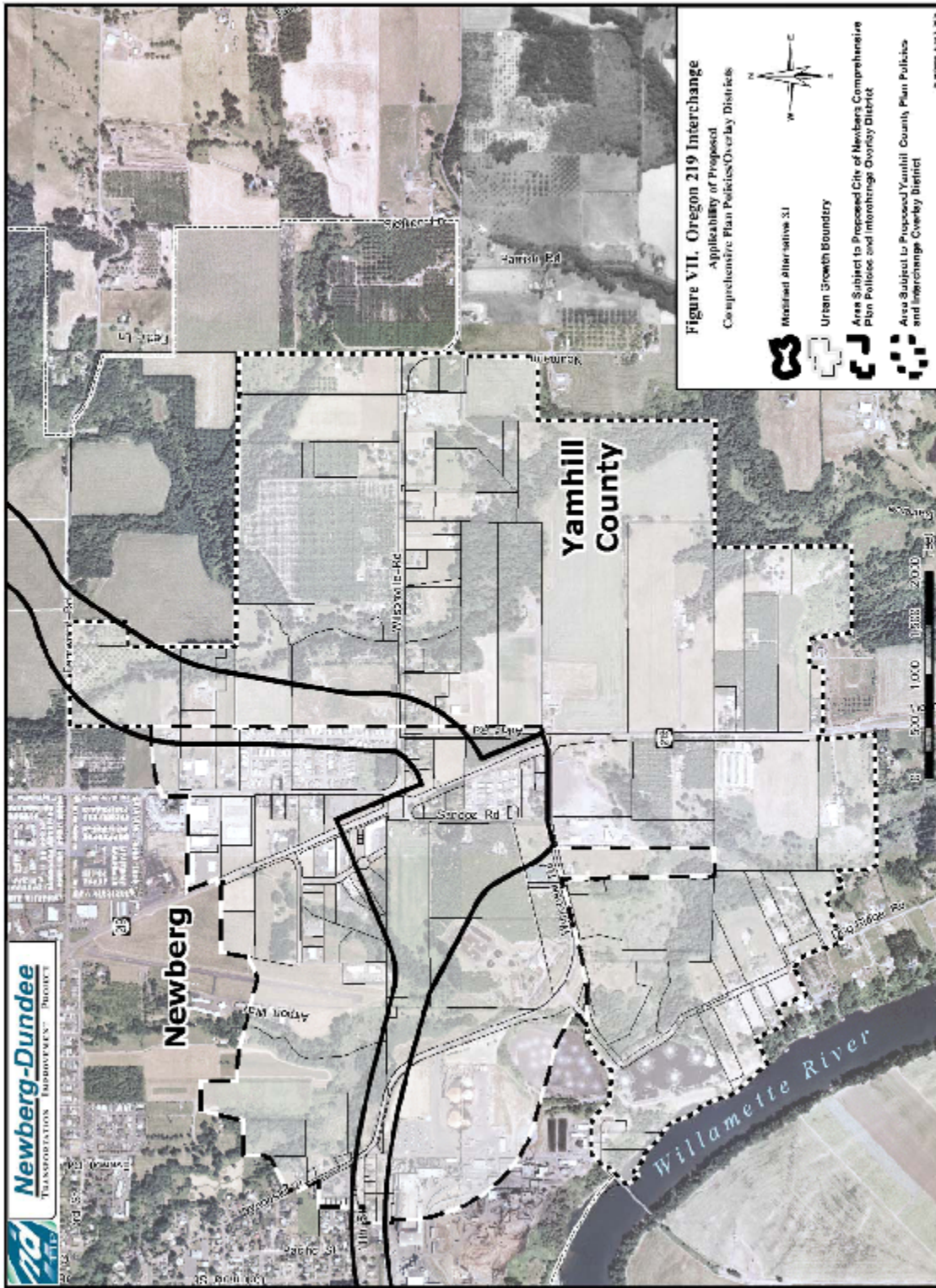
STRATEGIC ASSESSMENT: Removing these restrictions would allow inclusion of land within the Interchange Overlay District in the Urban Reserve and/or Urban Growth Boundary, and facilitate appropriate planning for these areas.

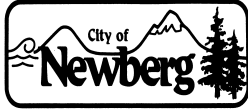
Attachments:

- Attachment 1: Maps of Interchange Overlay Districts
- Ordinance No. 2008-2708 with
- Exhibit A: Findings

Attachment 1







ORDINANCE NO. 2008-2708

AN ORDINANCE REVISING THE NEWBERG COMPREHENSIVE PLAN AND DEVELOPMENT CODE TO REMOVE A TEMPORARY FREEZE ON ZONE CHANGES, COMPREHENSIVE PLAN DESIGNATION CHANGES, AND AMENDMENTS TO THE URBAN GROWTH BOUNDARY AND URBAN RESERVE AREA FOR LAND IN THE BYPASS INTERCHANGE OVERLAY DISTRICTS

RECITALS:

1. In September, 2004, the City adopted policies and regulations relating to the Newberg-Dundee Bypass. These policies provided for both short and long term restrictions on land uses near the interchanges to protect the functioning of the future interchange. The City entered into an intergovernmental agreement with the Oregon Department of Transportation detailing responsibilities of each party. Yamhill County also adopted similar policies and regulations.
2. The adopted policies provide for an interim freeze on urban reserve area changes, urban growth boundary amendments, comprehensive plan amendments, and zone changes in bypass interchange overlay areas until ODOT prepares Interchange Area Management Plans (IAMPs). It was anticipated that the IAMPs would be complete in three years (by September 2007).
3. As part of the intergovernmental management agreement, ODOT agreed to complete the IAMPs. ODOT has begun creation of the IAMPs. However, completion of the plans has been delayed several times. There is not currently a reliable timetable for their completion.
4. The interim freeze is currently delaying several important planning projects, including planning for the Urban Reserve Area, an expansion of the Urban Growth Boundary (UGB), and some needed comprehensive plan amendments within the UGB to provide needed industrial land and land for needed housing. It also is delaying several property owners from having the ability to request changes, and to have those changes considered.
5. The City Council would like to amend the Newberg Comprehensive Plan and Development Code to end the temporary freeze on urban growth boundary amendments, urban reserve area amendments, comprehensive plan amendments, and zone changes within the Bypass Interchange Overlay Districts.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. *Goal 4 policies in the Transportation Chapter of the Newberg Comprehensive Plan are amended as follows:*

- h. The City actively supports the development of the Bypass in the southern location corridor described as Modified 3J in the Location Environmental Impact Statement, to be defined following the selection of a more narrowly defined preferred alternative through the Design-Level Environmental Impact Statement (EIS) process.
- i. The City supports the designation of the Bypass as a high-speed statewide expressway and freight route as defined in the Oregon Highway Plan. The Bypass and interchanges will be fully access controlled and no direct access will be allowed from private properties onto the Bypass. The primary function of the Bypass is to provide for high-speed through trips and to relieve congestion on Oregon 99W through downtown Newberg.
- j. The functions of the Bypass are to accommodate and divert longer-distance through trips around the Newberg-Dundee urban area and to serve regional trips going to and from Newberg or Dundee (i.e., those trips with either an origin or destination outside of the Newberg-Dundee urban area). The function of the planned intermediate interchanges is to provide access between Newberg or Dundee and other regions (e.g, McMinnville, Portland or the coast). It is not the function of the interchanges to provide for or attract regional commercial or highway commercial development in the vicinity of the interchanges. In general, needs for commercial development should be accommodated in areas planned for commercial development within Newberg. Plan amendments and zone changes shall be consistent with the function of the bypass and interchanges as set forth in this policy.
- k. For the purposes of compliance with the Transportation Planning Rule (OAR 660-12-0060) and in order to support the goal exception that Yamhill County must take to advance construction of the Bypass, the City of Newberg acknowledges that reliance upon the Bypass as a planned facility to support comprehensive plan amendments; or zone changes ~~or UGB expansions~~ is premature.

Accordingly, proposed changes to lands already planned and zoned for urban uses inside the Newberg UGB, ~~or annexations,~~ and plan amendments or zone changes within ~~or UGB expansions outside of designated~~ approved Urban Reserve Areas approved as of August 1, 2004 shall be subject to the analysis and mitigation requirements of OAR 660-12-0060. Upon adoption of a Bypass financing plan by the Oregon Transportation Commission, those portions of the Bypass identified to be constructed within the 20-year planning horizon by the financial plan can be considered planned transportation facilities pursuant to OAR 660-12-0060. ~~It is expected that the Oregon Transportation Commission will adopt a financing plan in approximately three years of adopting this plan policy.~~ During the period prior to adoption of a Bypass financing plan, the City of Newberg will work with ODOT to pursue interim measures to comply with OAR 660-12-0060.

~~Lands designated as Urban Reserve Areas as of August 1, 2004, and identified in Appendix A may or may not depend upon the transportation capacity of the future bypass or the improved capacity of Oregon 99W due to the future construction of the bypass. It is the policy of the City of Newberg to plan and zone those planned urban reserve areas that are outside the Interchange Area Management Plan Areas, as identified in Appendix A, to be compatible with the trip generation assumptions used to develop the Newberg 2025~~

~~Transportation Model when they are annexed into the City. For the purposes of this policy, compatibility means that trips estimated as attributable to planning and zoning in an Urban Reserve Area shall be no greater than 5 percent above the estimates used for that area in the Newberg 2025 Transportation Model. The trip generation assumptions for each Urban Reserve Area and a map illustrating these areas are provided in Appendix A and Table A-1. Annexation of the Urban Reserve Areas will not occur at a rate any greater than 30 percent of the total Urban Reserve Area in any five year period from the date of the adoption of this policy or until the adopted financing plan proposes construction of the bypass or portions of the bypass relied upon for capacity by the development proposal within the planning horizon. This assumption addresses assumed capacity on Oregon 99W only; development in these Urban Reserve Areas will continue to be subject to OAR 660-012-0060 for impacts to transportation facilities other than Oregon 99W.~~

~~Those planned Urban Reserve Areas located within the Bypass Interchange Overlay District shall be subject to the provisions of the Overlay District in the interim period before the City of Newberg and the Oregon Transportation Commission adopt Interchange Area Management Plans for the Oregon 219 and East Newberg Interchanges. Upon adoption, the IAMPs will guide land use and capacity issues for purposes of complying with OAR 660-012-0060.~~

- l. Prior to Oregon Transportation Commission approval of a Bypass financial plan and in conjunction with development and completion of the design-level Bypass EIS, the City will coordinate with ODOT, Yamhill County and affected property owners to participate in preparation and adoption of preliminary Interchange Area Management Plans (IAMPs) for the East Newberg and Oregon 219 Interchanges, consistent with the requirements of the 1999 Oregon Highway Plan and OAR 734-051-0200155 (the Access Management Rule). The preliminary IAMPs will address the following at a minimum: access management standards, road connections and local street circulation, compatible land uses and a process to ensure that bypass and interchange protection are considered when land use actions are proposed within the Interchange Overlay District. ~~bypass termini protection. The preliminary IAMPs will be designed to protect the function and capacity of the interchanges for at least a 20-year planning period.~~
- m. To protect the function of the Bypass to serve primarily longer-distance through trips, the City of Newberg will apply an Interchange Overlay District to lands that are within the Newberg city limits and within approximately ¼ mile of the East Newberg and Oregon 219 interchange ramps.
- n. ~~To enable the City and ODOT to adequately plan land uses and local circulation for the interchange areas, the City of Newberg will retain existing base zoning within the Interchange Overlay District in the interim period before IAMPs are prepared and adopted. Annexations will be allowed if the associated zone change is consistent with the acknowledged Newberg Comprehensive Plan designation for the property in effect at the date of adoption of the Interchange Overlay. Permitted and conditional uses that are authorized under existing base city zones will generally be allowed within the Interchange Overlay District, with certain limitations on commercial uses in the industrial zones.~~

- o. The Bypass location corridor was selected to avoid displacement of the Sportsman Airpark. The City supports the continued operation of the airport. The airport is located within the Newberg UGB, is within ¼ mile of the Oregon 219 interchange and is currently under Yamhill County jurisdiction. If the airport property is annexed, the City intends to apply an Airport Zone that maintains the ongoing use of the facility as an airport. The City will not support conversion of the airport property to commercial zoning or uses. The Bypass itself should be designed to avoid conflicts with existing air transportation corridors.
- p. The City of Newberg will coordinate with ODOT on any development proposal within the Bypass location corridor and Interchange Overlay District interchange management areas through the City's established Site Design Review process. Development planning should consider the planned corridor location and avoid conflicts where feasible.
- q. The City recognizes that the Oregon Highway Plan seeks to avoid UGB expansions along Statewide Highways and around interchanges unless ODOT and the appropriate local governments agree to an Interchange Area Management Plan to protect interchange operation or access management for segments along the highways. [OHP Action 1B.4]. Thus, the City will work with ODOT, property owners, and citizens to update the preliminary create IAMPs with more specific management strategies as soon as possible a financing plan that identifies a more certain time frame for construction is adopted by the Oregon Transportation Commission for the Bypass.
- ~~r. The City agrees not to approve expansion of the Newberg UGB or Urban Reserve Areas around the East Newberg or Oregon 219 interchanges until IAMPs for the two interchanges are prepared and adopted by ODOT, Yamhill County and the City of Newberg. An exception to this policy will be allowed for a limited expansion of the Newberg UGB into the westerly portion of Urban Reserve Area C to accommodate construction of the Northern Arterial in the general location shown on the City of Newberg acknowledged Transportation System Plan.~~
- ~~r. s.~~ Special planning and efforts shall be made to replace affordable housing displaced by construction of the bypass within the community. ODOT shall be encouraged to provide relocation assistance to the maximum extent allowed under Federal law.
- ~~s. t.~~ Special planning and efforts shall be made to retain and create livable and desirable neighborhoods near the bypass. This shall include retaining or creating street connections, pedestrian paths, recreational areas, landscaping, noise attenuation, physical barriers to the bypass, and other community features.

APPENDIX A

Table A-1

Newberg 2025 Transportation Model Assumptions for Urban Reserve Areas

URA Designation	Acres	Projected Households	Projected Employees	New Trips (2025 less existing)		Trips per Acre	
				PM Peak	Daily Trips	PM Peak	Daily Trips
A	466	872	11	436	4470	2.6	26.9
B	120	675	11	343	3489	2.9	29.1
C	67	190	1690	429	4710	6.4	70.3
D	60	256	0	126	1303	2	22
E	49	0	0	158	1566	3.2	32.0
F	154	357	67	170	1747	1.1	11.6

2. The Code of the City of Newberg is amended as follows:

151.531 PURPOSE.

The purpose of the BI Overlay is to:

(A) Protect the planned function and capacity of the Newberg-Dundee Bypass (Bypass) as an "expressway" as defined in the 1999 Oregon Highway Plan by supporting ODOT's efforts and responsibility to manage access to the state highway system in accordance with the OHP and Oregon Administrative Rule 734-51 and managing land uses in the vicinity of the East Newberg and Oregon 219 interchanges.

(B) Support the Newberg Comprehensive Plan for urban lands surrounding the East Newberg and Oregon 219 interchanges to protect the planned function of the Bypass and interchanges to serve primarily longer-distance through trips ~~by retaining existing zoning within the Interchange Overlay in the interim period before Interchange Area Management Plans are adopted.~~

(C) (1) To avoid development of commercial uses within planned industrial areas near the interchanges and ensure the long-term capacity for the through traffic function of the Bypass, the BI Overlay will prohibit certain uses that would otherwise be permitted outright or with conditional use approved in Newberg's Industrial Districts (M 1, M 2, and M 3) within the Bypass Interchange Overlay.

(2) ODOT will prepare Interchange Area Management Plans (IAMPs) for the East Newberg and Oregon 219 interchanges in partnership with Newberg, Yamhill County and affected property owners. This Bypass Interchange Overlay is intended as an interim land use tool that may be refined, revised or replaced as IAMPs are prepared and adopted for the East Newberg and Oregon 219 interchanges as required by the Oregon Highway Plan and OAR ~~731-051-0200~~ 734-051-0155.

(Ord. 2004-2602, passed 9-20-04)

151.531.1 AREA OF APPLICATION OF INTERCHANGE OVERLAY.

(A) The Bypass Interchange Overlay shall apply to lands inside the city limits within approximately one-quarter mile of the end of the ramps to the East Newberg and Oregon 219 interchanges to the Bypass.

(B) The Bypass Interchange Overlay applies in addition to the regulations of this underlying zoning district. All property within the Bypass Interchange Overlay shall be subject to both the provisions of this section and to the underlying zoning district. Nothing in this section shall be construed as a waiver or suspension of the provisions of any underlying zoning district, or any other applicable overlay district.

(C) The general boundaries of the Bypass Interchange Overlay are shown on Map VI (East Newberg Interchange) and Map VII (Oregon 219 Interchange) and shall be delineated on a parcel specific basis on the official zoning map.

(Ord. [2004-2602](#), passed 9-20-04)

151.531.2 PERMITTED USES.

All uses of land and water that are permitted in the underlying zoning district(s) are also permitted in the Bypass Interchange Overlay, with the exception of the special limitations on commercial uses in the Industrial Districts as outlined in § [151.531.4](#).

(Ord. [2004-2602](#), passed 9-20-04)

151.531.3 CONDITIONAL USES.

(A) Use of land and water that are listed as conditional uses in the underlying zoning district(s) may also be allowed in the Bypass Interchange Overlay, with the exception of uses included in the list of prohibited uses in § [151.531.4](#).

(B) Proposed conditional uses in the Bypass Interchange Overlay are subject to the standard conditional use criteria and procedures of this code.

(Ord. [2004-2602](#), passed 9-20-04)

151.531.4 PROHIBITED USES.

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

- (1) Automobile sales, new and used.
- (2) Billboards.
- (3) Car washes.
- (4) Convenience grocery stores.
- (5) Restaurants larger than 2000 square feet or with drive-up service windows.
- (6) Service stations.
- (7) Drive-in theaters.
- (8) Auction sales.
- (9) Bakeries, retail.
- (10) Building material sales.
- (11) Driving ranges.
- (12) Feed and seed stores.
- (13) Miniature golf courses.
- (14) Skating rinks.

(Ord. [2004-2602](#), passed 9-20-04)

~~151.531.5 INTERIM LIMITATIONS ON ZONE CHANGES WITHIN BYPASS INTERCHANGE OVERLAY.~~

~~To achieve the purpose of the Bypass Interchange Overlay, the City of Newberg will not approve zone changes within the boundaries of the BI Overlay during the interim period before Interchange Area Management Plans are prepared and adopted for the East Newberg and Oregon 219 interchanges. Exceptions will be allowed for the following:~~

~~(A) Zone changes associated with annexation may be approved when the city zone implements the acknowledged Comprehensive Plan designation in effect at the date of adoption of the BI Overlay.~~

~~(B) A small portion of the Springbrook Oaks Specific Plan falls within the one-quarter mile Interchange Overlay associated with the East Newberg interchange. The boundaries of the specific plan residential, industrial and mixed-use zone may be adjusted as allowed in the Springbrook Oaks Specific Plan.~~

~~(C) Zone changes associated with the construction of the Northern Arterial in the general location shown on the acknowledged Newberg Transportation System Plan.~~

~~(Ord. [2004-2602](#), passed 9-20-04)~~

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: December 31, 2008.

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of December, 2008, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Norma I. Alley, City Recorder

ATTEST by the Mayor this 4th day of December, 2008.

Bob Andrews, Mayor

**EXHIBIT “A” TO ORDINANCE 2008-2708
FINDINGS FOR CPTA-07-001**

The following findings support the adoption of amendments to the Newberg Comprehensive Plan and Development Code set forth in this ordinance to end the City of Newberg’s temporary freeze on changes to the Urban Reserve, Urban Growth Boundary, comprehensive plan designation changes, and zoning within the Interchange Overlay Districts. The districts were established by Yamhill County and the City of Newberg. The amendments preserve the City of Newberg’s other land use restrictions within the Interchange Overlay Districts. The findings are organized to address relevant goals, policies and criteria of the Newberg Comprehensive Plan, Newberg Development Code, and the Statewide Planning Goals. Language from the relevant documents is presented in bold, italic type.

1. Newberg Comprehensive Plan Findings

A. CITIZEN INVOLVEMENT

GOAL: *To maintain a Citizen Involvement Program that offers citizens the opportunity for involvement in all phases of the planning process.*

Finding: The City mailed individual notice of the December 1, 2008 public hearing on the recommended amendments to property owners of record with land within the boundaries of the Bypass Interchange Overlay District (within Newberg city limits). In addition, the City published a general notice of the Type IV public hearing in the November 12, 2008 edition of the *Newberg Graphic*. Notice of the hearing was also given through *News of Newberg’s Future*, the Planning Division’s newsletter. The Oregon Department of Land Conservation and Development (DLCD) was notified of the hearing on October 13, 2008.

The City finds that citizens have been provided adequate opportunity for involvement in the planning process for CPTA-07-001.

K. TRANSPORTATION

GOAL 1: *Establish cooperative agreements to address transportation based planning, development, operation and maintenance.*

Finding: ODOT and the City of Newberg have entered into an Intergovernmental Agreement (IGA, Agreement Number 21,367) to define respective state and local responsibilities for planning in the location and design phases of the bypass. The IGA is scheduled to terminate upon adoption of the IAMP or December 31, 2008, whichever occurs first, unless terminated earlier by mutual agreement or extended in writing. ODOT met with the Newberg staff on October 15, 2008 and have continued to work together since that time to develop these proposed amendments to Newberg policies and regulations. We anticipate a continued cooperative working relationship through the adoption of the Design FEIS and Record of Decision.

- i. New development and existing development undergoing expansion or modification shall be designed to accommodate planned long-term transportation improvement projects that are adjacent to the development.*

Finding: Lifting the freeze on changes in land use designation or zoning does not change the City’s responsibility to coordinate with ODOT on any development proposal within the Bypass location corridor and interchange management areas through the City’s established Site Design Review process. On-going City and ODOT coordination provides tools to accommodate the Bypass project. Development planning should continue to consider and complement the function of the bypass, and land use decisions should consider the planned corridor location and avoid conflicts where feasible.

N. URBANIZATION

GOAL 1: *To provide for the orderly and efficient transition from rural to urban land uses.*

Finding: Policy K.4.k was intended to limit UGB expansions and zone changes around the East Newberg and Oregon 219 interchanges to provide the City and ODOT time to adequately plan land uses and local circulation for the interchange areas. The proposed amended Policy K.4.k. removes the expectation that the Oregon Transportation Commission will adopt a financing plan within three years of the date the policy was adopted, and adds the statement, “During the period prior to adoption of a Bypass financing plan, the City of Newberg will work with ODOT to pursue interim measures to comply with OAR 660-12-0060.” Policy K.4.j specifically recognized that the Oregon Highway Plan seeks to avoid UGB expansions around interchanges until ODOT and the appropriate local governments agree to an Interchange Area Management Plan to protect interchange operation. As amended, these policies will continue to control pressures to prematurely convert land from rural to urban land uses on the basis of the planned Bypass and interchange location and ensure that there will be an orderly transition from rural to urban land uses.

2. Statewide Planning Goals Findings

GOAL: *CITIZEN INVOLVEMENT*

Goal 1 requires opportunity for citizens to be involved in all phases of the planning process.

Finding: See Newberg Comprehensive Plan Findings, GOAL: CITIZEN INVOLVEMENT.

GOAL 2: *LAND USE PLANNING*

Part I of Goal 2 requires that actions related to land use be consistent with acknowledged comprehensive plans of cities and counties. Goal 2 Part I also requires coordination with affected governments and agencies, evaluation of alternatives, and an adequate factual base.

Finding: The freeze limits the City’s ability to take actions needed to implement its long-range plans. By lifting the freeze, in cooperation with Yamhill County and ODOT, the City will be able to proceed with plans for legislative amendment of its Urban Growth Boundary without creating islands of nonconformity or uncertainty at the bypass interchanges. All legislative and quasi-judicial actions in the Interchange Overlay District will still be fully evaluated and required to comply with other requirements for that zoning district.

GOAL 9: ECONOMIC DEVELOPMENT

Goal 9 requires local governments to adopt comprehensive plans and policies that “contribute to a stable and healthy economy in all regions of the state.”

Finding: The freeze currently prevents owners of isolated parcels of residentially zoned land in the Urban Reserve from coming into the Urban Growth Boundary, and prevents industrially designated land within the Urban Growth Boundary from coming into the City to receive public water and sewer services. Lifting the freeze will allow industrial development where such use is appropriate and will not interfere with the future function of the bypass.

GOAL 12: TRANSPORTATION

Goal 12 requires local governments to “provide and encourage a safe, convenient and economic transportation system.” Goal 12 is implemented through the Transportation Planning Rule (TPR), OAR 660, and Division 12.

TRANSPORTATION PLANNING RULE

OAR 660-012-0015 provide for coordination between the State of Oregon and affected cities and counties in developing transportation system plans.

Finding: As the LDEIS and its supporting documents show, the Bypass project has been coordinated among ODOT, Yamhill County, and the cities of Newberg, Dundee and Dayton. Coordination has also extended to Marion County and the Federal Highway Administration.

The City of Newberg has been working with ODOT in drafting the proposed comprehensive plan and development code amendments, and is coordinating with Yamhill County to assure compatible and complementary policies and regulations for the areas of the Interchange Overlay Districts where they have or share jurisdiction.

OAR 660-012-0045 requires that local governments adopt regulations to protect transportation facilities for their identified functions.

Finding: This provision of the TPR provided the key impetus for the cities of Newberg, Dundee and Dayton to amend their comprehensive plans to protect the Bypass and interchanges to accommodate primarily longer-distance through traffic. To meet this requirement, the City of Newberg has adopted a Bypass Interchange Overlay District to help assure that the bypass will accommodate primarily longer-distance through traffic. At the appropriate time, the City of Newberg will work with ODOT to create and adopt an Interchange Area Management Plan also aimed at protecting this function. The Bypass and interchanges will be fully access controlled and all

access to parcels adjacent to the Bypass and interchanges will be from the local street system.

GOAL 14: URBANIZATION

Goal 14 requires local governments to establish urban growth boundaries in accordance with the need and location factors listed in the goal in order to separate urban and urbanizable lands from rural lands. Goal 14 also mandates the orderly and efficient conversion of urbanizable land to urban uses.

Finding: Under Goal 14, urban and urbanizable lands are available for urban uses. However, Goal 14 prohibits urban uses on rural lands. To locate urban uses on rural lands, local governments either must expand the UGB to include the subject property or take a Goal 14 exception setting forth reasons why urban development should be allowed on rural land and explaining why the urban uses cannot reasonably be located inside the UGB.

The Goal 4 policies in the Transportation Chapter of the Newberg Comprehensive Plan have limited URA and UGB expansions and zone changes around the East Newberg and Oregon 219 interchanges during the interim period before interchange area management plans are prepared and adopted. The policies were intended to reduce pressures to prematurely convert land from rural to urban land uses on the basis of the planned Bypass and interchange locations.

Due to delays in implementing the IAMPs, the restrictions on expansions and changes have had the effect of restricting all conversion of urbanizable land to urban uses, even when conversion would promote order and efficiency. The proposed amendments would allow changes in the URA, UGB, and zoning to occur within the Interchange Overlay Districts when and if the conversion of urbanizable land to urban uses is timely and appropriate, and would not interfere with the functions of a future bypass interchange.

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: 2008, December 1

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

SUBJECT:
To accept the annual audit report and financial statements for Fiscal Year Ended June 30, 2008.

Contact Person (Preparer) for this Resolution: Elizabeth Comfort

Dept.: Finance

File No.:
(if applicable)

RECOMMENDATION: Adopt **Resolution No. 2008-2818** accepting the annual auditor's report and financial statements for Fiscal Year Ended June 30, 2008.

BACKGROUND:

1. Each year following the close of a fiscal year the selected auditors will come to the City to review the financial records. The current auditors are Boldt, Carlisle and Smith, LLC of Salem, Oregon. The audit team was at the City the week of September 1, 2008 conducting field work. This process includes: obtaining an understanding of the City's internal controls, review of City Council minutes, examining and testing samples of various transactions, and inquiring of management and other employees about fraud risks.

3. On November 7, 2008, Boldt, Carlisle & Smith issued an unqualified opinion on the City's financial report for the year ended June 30, 2008.

4. The financial reports are a summary of all the fiscal activity, debt, assets, and other obligations categorized by fund type. The notes to the financial statements disclose the City's significant accounting policies and provide details of significant year end balances.

4. The Transmittal Letter and Management Discussion and Analysis provide a narrative of significant financial activities that have transpired during the fiscal year. These documents also disclose significant issues that may have a future financial impact. These reports are found at the beginning of the report.

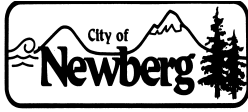
5. For the past 15 years Newberg has prepared the CAFR and submitted it to the Government Financial Officers Association (GFOA) for an award. Newberg has received this award each year and receives national recognition.

FISCAL IMPACT: none.

STRATEGIC ASSESSMENT: The City of Newberg financial statements for the year ended June 30, 2008 have been prepared in conformity with Generally Accepted Accounting Principles and Oregon Local Budget Law. These statements will be filed with all regulatory agencies that monitor City financial activities.

Attachment:

1. Resolution No. 2008-2818
 Exhibit "A" – Executive Summary of the Comprehensive Auditor's Report



RESOLUTION No. 2008-2818

**A RESOLUTION ACCEPTING THE ANNUAL AUDIT REPORT AND
FINANCIAL STATEMENTS FOR FISCAL YEAR ENDED JUNE 30,
2008**

RECITALS:

1. The week of September 1, 2008, the auditing firm of Boldt, Carlisle and Smith, LLC. conducted field work with review of the financial records of fiscal year ended June 30, 2008.
2. On November 7, 2008, Boldt, Carlisle & Smith issued an unqualified opinion on the City's financial report for the year ended June 30, 2008.
3. The annual audit was completed for fiscal year ended June 30, 2008 and submitted to Council.
4. On November 7, 2008, Boldt, Carlisle & Smith issued an unqualified opinion on the City's financial report for the year ended June 30, 2008.
5. The City of Newberg financial statements for the year ended June 30, 2008 have been prepared in conformity with Generally Accepted Accounting Principles and Oregon Local Budget Law.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The Council accepts the annual audit report and financial statements for fiscal year ended June 30, 2008, which is attached hereinto as Exhibit "A" and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: December 2, 2008.

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of December, 2008.

Norma I. Alley, City Recorder

ATTEST by the Mayor this _____ day of _____, 2008.

Bob Andrews, Mayor



BOLDT, CARLISLE & SMITH LLC
 CERTIFIED PUBLIC ACCOUNTANTS
 PARTNERSHIP ■ ASSURANCE ■ INNOVATION

INDEPENDENT AUDITOR'S REPORT

Honorable Mayor and Members of the City Council
CITY OF NEWBERG
 Newberg, Oregon

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of **CITY OF NEWBERG**, as of and for the year ended June 30, 2008, which collectively comprise the City's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the City's management. Our responsibility is to express opinions on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and the significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the **CITY OF NEWBERG**, as of June 30, 2008, the respective changes in financial position, and cash flows, where applicable, thereof, and the respective budgetary comparisons for the General, Street, and Building Inspection Funds, for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated November 7, 2008 on our consideration of the City's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and important for assessing the results of our audit.

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**Honorable Mayor and Members of the City Council
CITY OF NEWBERG
Newberg, Oregon**

INDEPENDENT AUDITOR'S REPORT (Continued)

The management's discussion and analysis on pages *a* through *n* is not a required part of the basic financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City's basic financial statements. The introductory section, combining and individual fund financial statements and schedules, and statistical section are presented for purposes of additional analysis and are not a required part of the basic financial statements. The accompanying schedule of expenditures of federal awards is presented for purposes of additional analysis as required by U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and is also not a required part of the basic financial statements of **CITY OF NEWBERG**. The combining and individual fund financial statements and schedules and the schedule of expenditures of federal awards have been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, are fairly stated in all material respects in relation to the basic financial statements taken as a whole. The introductory and statistical sections have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we express no opinion on them.

Boldt, Carlisle & Smith LLC
Certified Public Accountants
Salem, Oregon
November 7, 2008

By: 

Douglas C. Parham, Member

Management's Discussion and Analysis

The management of the City of Newberg, Oregon (City) presents this narrative overview and analysis to facilitate both a short and a long-term analysis of the financial activities of the City for the fiscal year ended June 30, 2008. This Management's Discussion and Analysis (MD&A) is based on currently known facts, decisions, and conditions that existed as of the date of the independent auditor's report. Additional information outside the scope of this analysis can be found in the Letter of Transmittal.

FINANCIAL HIGHLIGHTS

- Total assets of the City exceeded its liabilities by \$141.9 million. Of this amount, \$15.3 million were reported as unrestricted net assets, amounts which are available for use to meet the City's on-going obligations to citizens and creditors.
- The City's net assets increased by \$5.7 million as a result of operations.
- Capital assets increased \$12.2 million, or 9%, due in large part to significant wastewater and water system capital projects undertaken during the fiscal year.
- The City's long-term obligations increased \$5.6 million, or 22%, due to the interim financing agreement with Oregon Economic and Community Development Department to fund the Effluent Reuse system capital improvements.
- Property taxes increased approximately \$0.3 million, or 5.7% over the prior year.
- Total cost of all programs was \$24.4 million, up 10.4% over last year.

Overview of the Financial Statements

The City's annual financial report consists of several sections. The components of the report include the following:

- **Management's Discussion and Analysis.** This section of the report provides financial highlights, overview and economic factors affecting the City.
- **Basic Financial Statements.** These statements include the government-wide statements, fund financials, and the notes to the financial statements.
 - **Government-wide financial statements.** The government-wide financial statements are designed to provide readers with a broad overview of the City's finances, in a manner similar to a private-sector business. Within this view, all City operations are categorized and reported as either

governmental or business-type activities and are presented using the full accrual basis of accounting. Governmental activities include basic services such as public safety, library, community development and general government administration. Business-type activities are water, wastewater, storm water and emergency medical services. The government-wide statements include the Statement of Net Assets and the Statement of Activities.

- **Statement of Net Assets.** The Statement of Net Assets presents information on all of the City's assets and liabilities, with the difference between the two reported as net assets. Over time, increases or decreases in net assets may serve as a useful indicator of whether the financial position of the City is improving or deteriorating.
 - **Statement of Activities.** The focus of the Statement of Activities is to present the major program costs and match major resources with each. To the extent a program's cost is not recovered by grants and direct charges, it is paid from general taxes and other general resources. This Statement summarizes and simplifies the user's analysis to determine the extent to which programs are self-supporting and/or subsidized by general revenues.
- **Fund Financial Statements.** Fund financial statements focus separately on major governmental funds and proprietary funds. Governmental funds are used to account for activities where the emphasis is placed on available financial resources, rather than upon net income determination. Therefore, unlike the government-wide financial statements, governmental fund financial statements focus on the acquisition and use of current available resources, as well as on balances of current resources available at the end of the fiscal year. Such information may be useful in evaluating a government's near-term requirements.

Due to the fact that the focus of the governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for governmental funds with similar information presented for governmental activities in the government-wide financial statements. By doing so, readers may further understand the long-term impact of the government's near-term financial decisions.

- **Governmental Funds.** The City maintains 15 individual governmental funds. Information is presented separately in the Governmental Fund Balance Sheet and in the Governmental Fund Statement of Revenues, Expenditures, and Changes in Fund Balances for those funds that are considered significant (major) to the City taken as a whole. These financial statements report four major funds: General Fund, Street Fund, Building Inspection Fund,

and Street Capital Projects Fund. Data from the other 11 governmental funds are combined into a single, aggregated presentation. For each major fund, a Budgetary Comparison Statement is presented. Readers who wish to obtain information on nonmajor funds can find it in the Combining Schedules of Nonmajor Funds and/or the Supplemental Information-Budgetary Comparison Schedules sections of this report.

- **Proprietary funds** are used to account for activities where the emphasis is placed on net income determination. The City maintains two different types of proprietary funds – enterprise funds and internal service funds. Enterprise funds are used to report the same functions presented as business-type activities in the government-wide financial statements. The City uses enterprise funds to account for its water, wastewater, storm water, and emergency medical services operations. Internal service funds are an accounting device used to accumulate and allocate costs internally among the City’s various functions. The City uses internal service funds to account for facilities and fleet services, information systems, finance, legal, administration, human resources, vehicle/equipment replacement, and risk management activities. The assets and liabilities of the internal service funds have been allocated among the governmental and business-type activities.

The enterprise funds, all of which are considered to be major funds (on a consolidated basis) of the City, are reported separately as proprietary fund financial statements in the basic financial statements. Conversely, all internal service funds are combined into a single, aggregated presentation in the proprietary fund financial statements. Individual fund data for the internal service funds is provided as other supplementary information in the form of combining statements.

- **Fiduciary Funds.** Fiduciary funds are used to account for resources held for the benefit of parties outside the government. Fiduciary funds are not reflected in the government-wide financial statement because the resources of those funds are not available to support the City of Newberg’s own programs. The accounting used for fiduciary funds is similar to the treatment used for proprietary funds. The City has two fiduciary funds: Employee Pension Trust Fund and the Bail Fund.
- **Notes to the Financial Statements.** The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements.

- **Other Supplementary Data.** The supplementary data section includes combining statements for the non-major governmental funds, combining statements by fund type, and budgetary comparison statements. The combining internal service fund statements are also included in this section.
- **Other Information.** This section includes capital asset and other financial schedules.
- **Statistical Section.** This section includes trend information and demographics.
- **Reports of Independently Certified Public Accountants Required by Statutes.** Supplemental communication on City compliance and internal controls as required by Oregon statutes and Government Auditing Standards.

GOVERNMENT-WIDE FINANCIAL ANALYSIS

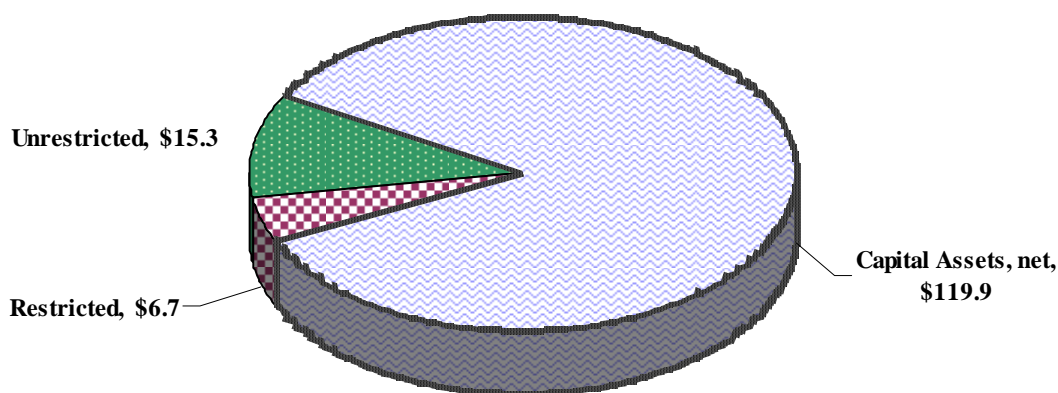
The following table reflects the condensed Statement of Net Assets compared to prior year.

TABLE 1
NET ASSETS AT YEAR END
(in millions)

	Governmental Activities		Business-type Activities		Total Government	
	2008	2007	2008	2007	2008	2007
Cash and investments	\$ 11.6	\$ 12.2	\$ 12.7	\$ 11.8	\$ 24.3	\$ 24.0
Other assets	3.3	3.7	1.3	1.3	4.6	5.0
Capital assets	78.3	73.5	68.9	61.5	147.2	135.0
Total assets	<u>93.2</u>	<u>89.4</u>	<u>82.9</u>	<u>74.6</u>	<u>176.1</u>	<u>164.0</u>
Long-term obligations	9.3	9.0	21.8	16.5	31.1	25.5
Other liabilities	1.5	1.2	1.7	1.1	3.2	2.3
Total liabilities	<u>10.8</u>	<u>10.2</u>	<u>23.5</u>	<u>17.6</u>	<u>34.3</u>	<u>27.8</u>
Net assets:						
Invested in capital assets, net of related debt	72.6	67.7	47.3	45.1	119.9	112.8
Restricted	2.0	4.2	4.7	4.6	6.7	8.8
Unrestricted	7.9	7.3	7.4	7.3	15.3	14.6
Total net assets	<u>\$ 82.5</u>	<u>\$ 79.2</u>	<u>\$ 59.4</u>	<u>\$ 57.0</u>	<u>\$ 141.9</u>	<u>\$ 136.2</u>

As indicated in the following chart, \$119.9 million, or 84.5% of the City's net assets as of June 30, 2008 reflect the government's investment in capital assets (land, building, equipment, infrastructure, net of depreciation) less any related outstanding debt used to acquire those capital assets. The City uses these capital assets to provide services to citizens and consequently, they are not available for future spending. Restricted net assets total \$6.7 million, or 4.7% and represent cash and investments that are legally restricted for capital expansion or debt service. The remaining balance of unrestricted net assets totaling \$15.3 million, or 10.8%, may be used to meet the City's ongoing obligations.

City of Newberg - 2008 Net Assets



Governmental Activities

The City's net assets from governmental activities increased 4.2%, from \$79.2 million to \$82.5 million. This increase is the change in net assets reflected in the Statement of Activities, shown in Table 2, and explained below:

- Cash and investments decreased by \$0.6 million or 4.9% due to significant street related capital project expenditures during the fiscal year.
- Capital assets increased \$4.8 million, primarily as a result of \$2.5 million in infrastructure contributions by developers during fiscal year 2007-08 and the City funded construction of the Mountainview Road S-Curve project.
- Long-term obligations increased \$0.3 million due to the recognition of Other Post Employment Benefit obligation of \$167,504 and a new capital lease for City-wide communications equipment. Compensated absence obligations rose as well.
- Other liabilities increased \$0.3 million, or 25% due to year end payables relating to the Villa Road and 9th Street Rehabilitation capital projects.

Business-type Activities

The City's net assets from business-type activities increased 4.2%, from \$57.0 million to \$59.4 million. This increase is the change in net assets reflected in the Statement of Activities, shown in Table 2, and explained in the following:

- Cash and investments increased \$0.9 million, or 7.6% as a result of increases in cash flows from operations of the wastewater and storm water divisions.

- Capital assets increased \$7.4 million (net of depreciation), primarily as a result of:
 - \$7 million for the Wastewater Effluent Reuse project
 - \$1 million for the Mountainview S-Curve water and wastewater lines
- Long-term obligations increased by \$5.3 million, or 32% due to the use of interim financing with Oregon Community and Economic Development Department to go forward with the Wastewater Effluent Reuse Project.
- Other liabilities increased \$0.6 million, or 54.5% due to payables relating to significant capital projects.

STATEMENT OF ACTIVITIES

The following table reflects the condensed Statement of Activities and Changes in Net Assets compared to prior year.

TABLE 2
GOVERNMENTAL AND PROPRIETARY ACTIVITIES
FOR FISCAL YEARS ENDING JUNE 30, 2007 and 2008
 (in millions)

	Governmental Activities		Business-type Activities		Total Government	
	2008	2007	2008	2007	2008	2007
Revenues						
Charges for services	\$ 4.4	\$ 3.4	\$ 9.0	\$ 8.7	13.4	12.1
Operating grants and contributions	1.7	1.1	-	0.1	1.7	1.2
Capital grants and contributions	2.9	3.3	3.1	2.7	6.0	6.0
Taxes	7.9	7.2	-	-	7.9	7.2
Interest	0.5	0.7	0.5	0.5	1.0	1.2
Other	0.1	0.1	-	-	0.1	0.1
Total revenues	<u>17.5</u>	<u>15.8</u>	<u>12.6</u>	<u>12.0</u>	<u>30.1</u>	<u>27.8</u>
Expenses						
General government	1.1	0.3	-	-	1.1	0.3
Public safety	8.0	7.3	-	-	8.0	7.3
Library	1.1	1.0	-	-	1.1	1.0
Community development	3.9	3.9	-	-	3.9	3.9
Interest on long-term debt	0.5	0.5	-	-	0.5	0.5
Water	-	-	4.0	3.3	4.0	3.3
Sewer	-	-	3.9	4.1	3.9	4.1
Storm	-	-	0.7	0.6	0.7	0.6
Emergency medical services	-	-	1.2	1.1	1.2	1.1
Total expenses	<u>14.6</u>	<u>13.0</u>	<u>9.8</u>	<u>9.1</u>	<u>24.4</u>	<u>22.1</u>
Increase in net assets before transfers	<u>2.9</u>	<u>2.8</u>	<u>2.8</u>	<u>2.9</u>	<u>5.7</u>	<u>5.7</u>
Transfers	<u>0.4</u>	<u>0.3</u>	<u>(0.4)</u>	<u>(0.3)</u>	<u>-</u>	<u>-</u>
Changes in net assets	<u>3.3</u>	<u>3.1</u>	<u>2.4</u>	<u>2.6</u>	<u>5.7</u>	<u>5.7</u>
Beginning net assets	<u>79.2</u>	<u>76.1</u>	<u>57.0</u>	<u>54.4</u>	<u>136.2</u>	<u>130.5</u>
Ending net assets	<u>\$ 82.5</u>	<u>\$ 79.2</u>	<u>\$ 59.4</u>	<u>\$ 57.0</u>	<u>\$ 141.9</u>	<u>\$ 136.2</u>

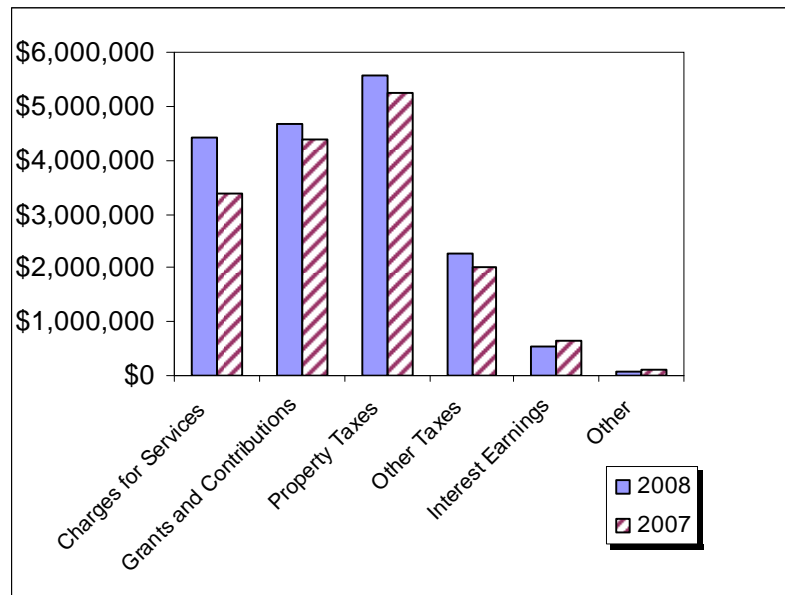
Governmental Activities

Governmental activities provided a \$3.3 million increase to the City's net assets and accounts for 57.9% of the total City increase. This increase is contributable to growth in a variety of revenue sources: fines from traffic violations, property taxes, donated infrastructure, and construction related fees.

- Charges for services – These are revenues that arise from charges to customers, applicants, or others who purchase, use or directly benefit from the goods, services, or privileges provided, or are otherwise directly affected by the services. Revenues primarily consist of fees charged for services, licenses and permits. This category also includes municipal court revenues from issuance of traffic citations, which increased during 2007-08. Revenues generated from building inspection, community development, and planning fees experienced a \$0.7 million rebound over the prior fiscal year.
- Grants and contributions – These are revenues arising from mandatory and voluntary non-exchange transactions with other governments, organizations, or individuals that are restricted for use in a particular program. The City administered a pass thru CBDG grant on behalf of CASA of Oregon for \$794,000 to construct a Head Start facility in Newberg.
- Operating grants/contributions revenues primarily consist of state gas tax disbursed to the City to use for road maintenance. Revenues from this source decreased by nearly \$36,000 during 2007-08 to \$919,740. Other small state and private contributions are also included in the total. These funds go to support specific activities within the City.
- Capital grants/contributions revenues primarily consist of state grants and developer infrastructure contributions (e.g. fair market value of subdivision's infrastructure such as streets, roads, and right-of-way/easements). Overall grant/contributions decreased \$0.4 million from \$3.3 million to \$2.9 million due to a slow down in street related infrastructure contributions.
- Taxes – These are revenues that consist primarily of property taxes, hotel/motel taxes, and franchise fees based on gross revenues. Property taxes increased \$0.3 million, which is a decrease from the rapid growth experienced during the last few fiscal years. Franchise fees increased approximately \$0.1 million and public service taxes were \$0.3 million above 2006-07 revenues.
- Interest – This is revenue derived from the City's investment of temporarily idle assets which decreased by \$0.2 million reflecting the reduction in market investment rates.
- Other - This is miscellaneous revenue not related to services provided. Revenues in this category were consistent with the prior fiscal year.

Below is a graphical comparison of governmental revenues by source for 2007-08 compared to 2006-07.

Governmental Activities-Revenues by Source



- Programs – These are direct expenses that are specifically associated with a service, program, or department and, thus, are clearly identifiable to a particular function. The following table reflects the changes in program expenses:

Table 3
Governmental Activities - Program Expenses
for the fiscal year ended June 30, 2008
 (in millions)

Programs	FY 2007-08		Compared to FY 2006-07	
	Amount	Percent of Total	Amount	Percent
General government	\$ 1.1	7.5%	\$ 0.8	266.7%
Public safety	8.0	54.8%	0.7	9.6%
Library	1.1	7.5%	0.1	10.0%
Community development	3.9	26.7%	-	0.0%
Interest on long-term debt	0.5	3.4%	-	0.0%
Total expenses	\$ 14.6	100.0%	\$ 1.6	12.3%

- General government consists of costs relating to operations of the City Council and fundraising efforts by the Newberg Friends of the Animal Shelter. In 2007-08, this category also included \$794,000 in expenditures funded by a pass thru CDBG award to construct a Head Start Facility in Newberg.

- Public safety consists of the police, fire, court, and 911 operations. The increase in program expense is primarily due to increases in personnel costs.
- Library costs increased slightly due to rising personnel costs and administrative service charges.
- Community development consists of planning, economic development, building inspection, and road maintenance programs. Costs were consistent with the prior year.

Business-type Activities

Overall revenues increased by \$0.6 million over the prior fiscal year. Operating rate increases in all business-type divisions positively impacted revenues. System developments fees rebounded from the low levels experienced in 2006-07, while capital contributions were slightly less than the prior fiscal year.

The following table reflects the changes in program expenses for the business-type activities:

Table 4
Business-Type Activities - Program Expenses
for the fiscal year ended June 30, 2008
(in millions)

Programs	FY 2007-08		Compared to FY 2006-07	
	Amount	Percent of Total	Increase/(Decrease) Amount	Percent
Water	4.0	40.8%	0.7	21.2%
Sewer	3.9	39.8%	-0.2	-4.9%
Storm	0.7	7.1%	0.1	16.7%
Emergency medical services	1.2	12.2%	0.1	9.1%
Total expenses	<u>\$ 9.8</u>	<u>100.0%</u>	<u>\$ 0.7</u>	<u>7.7%</u>

The Program expense increase of \$0.7 million was primarily attributable to the water division. Capital asset depreciation in the water division increased \$0.2 million as recently constructed capital projects became depreciable. Interest costs related to the funding of these projects also rose prominently by \$0.4 million as debt service commitments increased. The wastewater division experienced a decrease in costs due to less work performed by consultants for infrastructure planning during 2007-08.

FUND-BASED FINANCIAL ANALYSIS

As previously discussed, the City uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

Governmental Funds

The focus of the City’s governmental funds is to provide information on near-term inflows, outflows, and balances of available resources. Such information is useful in

assessing the City's financing requirements. In particular, unreserved fund balance may serve as a useful measure of a government's net resources available for spending at the end of the fiscal year.

As of the end of the current fiscal year, the City's governmental funds reported combined ending fund balances of \$9.7 million, a decrease of \$0.9 million. Approximately 78% of this total amount constitutes unreserved fund balance, which is available for spending at the government's discretion, subject to reporting fund-type limitations. The remainder of fund balance is reserved to indicate that it is not available for new spending because it has already been committed to pay debt service, invested in inventory, or has been reserved for other purposes.

The General Fund is the chief operating fund of the City. The fund balance of the City's General Fund increased by \$1 million, or 41%, during the current fiscal year. Key components to the change for the year ended June 30, 2008 are as follows:

- Property taxes increased \$0.3 million, or 5.7%. Assessed values are limited to 3% growth, thus the remaining 2.7% is related to new construction and collections on delinquent taxes. This is significantly lower than the high rates of growth experience during the last few fiscal years.
- Other taxes, which consist of franchise fees, public service taxes, and motel taxes, increased slightly over the prior fiscal year.
- Licenses and permits experienced an 82% increase or \$0.4 million. Activity was mostly based upon commercial construction, attributable in large part to the Allison Inn project.
- Fines and forfeitures increased \$0.3 million during the fiscal year due to the implementation of a photo red light system, more traffic citation issuances, and an aggressive effort by the City's court department to collect on delinquent accounts.
- Expenditures in the General Fund grew by \$0.5 million or 5.6% over the prior fiscal year. Public safety functions continued to be the largest contributor to cost increases at \$0.4 million. Personnel costs in these divisions continue to rise.

The Street Fund ending balance decreased by \$157,903 due to costs related to the 9th Street Rehabilitation, as anticipated in the 2007-08 budget. Gasoline tax revenues received from the State were slightly less than the prior fiscal year. Costs, excluding the rehabilitation project, were consistent with the prior year.

The Building Inspection Fund continued to struggle during 2007-08. Although building permit and inspection revenue increased by \$0.2 million, the fund failed to fully recoup costs. Expenditures for 2007-08 were comparable with the prior fiscal year. The slow down in the housing market has adversely affected the revenues produced by this fund.

The Street Capital Projects fund became a major fund in 2007-08 due to significant expenditures on the Mountainview S-Curve project. Resources for this project came from the Street System Development Fund.

Other governmental fund balances decreased by \$1,836,637 due to transfers out of the Street System Development Fund to the Street Capital Projects Fund. The Economic Development Fund had significant loan collections during 2007-08 which caused fund balance to increase by \$0.2 million. The Fire Truck Fund continued to collect fees in anticipation of purchasing equipment during the 2008-09 fiscal year. As a result, the Fire Truck Fund ended the period with a fund balance increase of nearly \$0.2 million.

Proprietary Funds

Net assets of the water utility increased 4.2% during 2007-08. Charges for services decreased by nearly \$100,000 during the fiscal year due to a drop in water consumption. System development charges increased slightly over the prior year due to commercial construction projects. Operating expenses were up 10% consistent with trends in past years.

The net assets of the wastewater utility increased by \$1 million or 4.3% during 2007-08. System development charges doubled over the prior year. Charges for services increased 5%, and operating expenses decreased by 6%. Operating income was negative for 2007-08 (\$224,293), reflecting a multi-year trend of insufficient operating revenues. Implemented rate increases have been effective in reducing the scope of the operating loss, but not enough to make the division break even. Infrastructure contributions from developers were consistent with the prior year at \$0.5 million.

The net assets of the storm water utility increased \$0.4 million, or 4.2% due in large part to infrastructure contributions by developers. Operating costs, specifically depreciation, continued to outpace operating revenues resulting in an operating loss of (\$167,216). Storm water charges for services increased 10.4%, while operating costs increased 13.2%. Even with the additional storm water fee rate increase in July 2007, recovery of all costs (including depreciation) has yet to become a reality.

Net assets of the emergency medical services division increased \$43,547. Operating revenues increased 15.1% while operating expenses grew 4.9%. A rate increase for medical transports was implemented in August of 2007 and has thus far been sufficient to fully recover operating costs.

BUDGETARY HIGHLIGHTS

General Fund budget appropriation revisions totaled \$797,523 during 2007-08. The Contingency appropriation was increased to recognize additional beginning fund balance.

CAPITAL ASSETS AND DEBT ADMINISTRATION

Capital Assets. As of June 30, 2008, the City had invested \$147.2 million in capital assets as reflected in the following table, which represents a net increase (additions, deductions and depreciation) of \$12.2 million.

TABLE 5
CAPITAL ASSETS AT YEAR END
(NET OF DEPRECIATION)
(in millions)

	Governmental Activities		Business-type Activities		Totals	
	2008	2007	2008	2007	2008	2007
Land	\$ 1.0	\$ 1.0	\$ 1.4	\$ 1.4	\$ 2.4	\$ 2.4
Right of way	25.8	24.1	-	-	25.8	24.1
Construction in progress	0.8	0.9	7.8	11.8	8.6	12.7
Buildings & improvements	7.7	8.0	21.8	14.9	29.5	22.9
Equipment	2.3	2.0	4.7	5.2	7.0	7.2
Utility systems	-	-	33.2	28.2	33.2	28.2
Infrastructure	40.7	37.5	-	-	40.7	37.5
Total	<u>\$ 78.3</u>	<u>\$ 73.5</u>	<u>\$ 68.9</u>	<u>\$ 61.5</u>	<u>\$ 147.2</u>	<u>\$ 135.0</u>

Major capital asset events during the current fiscal year included the following:

- Purchase of nine new vehicles for various departments
- Capital lease for a new telecommunications system for \$337,821
- IT Server Room Remodel \$82,000
- Significant additions to construction in progress for the following projects: Wastewater Effluent Reuse Project, \$7 million, Mountainview Road S-Curve project, \$1 million
- Infrastructure contributed by developers: Street, ROW, and lighting, \$2.5 million, water lines, \$0.3 million, wastewater lines, \$0.3 million, storm lines, \$0.4 million

Additional information on the City's capital assets can be found in the notes to the basic financial statements on page 38 of this report.

Debt. As of June 30, 2008, the City had a total long-term debt obligation of \$29.6 million. Of this amount, \$8.1 million represented outstanding bonded indebtedness. Outstanding bonded debt included \$3.2 million to be serviced by property taxes, \$4.9 million to be serviced by the City Hall fee and internal charges to departments. All of these debts are backed by the full faith and credit of the City.

TABLE 6
OUTSTANDING DEBT AT YEAR END
(in millions)

	Governmental Activities		Business-type Activities		Totals	
	2008	2007	2008	2007	2008	2007
General obligation	\$ 3.2	\$ 3.5	\$ -	\$ -	\$ 3.2	\$ 3.5
Certificates of participation	2.2	2.3	-	-	2.2	2.3
Limited tax bonds	2.7	2.7	-	-	2.7	2.7
Notes payable	-	-	15.7	16.3	15.7	16.3
Interim financing	-	-	5.8	-	5.8	-
Total	<u>\$ 8.1</u>	<u>\$ 8.5</u>	<u>\$ 21.5</u>	<u>\$ 16.3</u>	<u>\$ 29.6</u>	<u>\$ 24.8</u>

The City maintained its A-3 debt rating from Moody's Investors Service, which was affirmed in March 1998.

The City received proceeds of \$5.8 million from an interim financing agreement with OECD (Oregon Economic and Community Development Department) during 2007-08. The funds were used to finance the WWTP Effluent Reuse Project.

Additional information on the City's long-term obligations can be found in the notes to the basic financial statements on page 40 of this report.

ECONOMIC FACTORS

During 2007-08, new residential construction slowed considerably as concerns arose nationwide over high risk lending practices utilized by the home loan industry. Nationally, home foreclosures rose to unforeseen levels. As a result, the demand for new homes, and the ability to borrow to purchase a new home, decreased substantially. Even existing home sales and value diminished noticeably. The lower rate of property tax revenue growth for 2007-08 reflects this downturn. Residential growth is expected to be even less in 2008-09. However, commercial property development for 2007-08 resulted in approximately \$30 million in added value which is higher than the past two fiscal years.

Business-type activities are funded by utility charges, charges for medical transport, and systems development charges. Utility charges were 31% of total government-wide revenues for the City. The City periodically increases its water, wastewater, storm water, and emergency medical services charges to keep up with the cost of services. Newberg area citizens take an active role in deciding upon these increases through committee meetings. Of particular concern in the future is to assure that utility rates reflect the need to expand the existing systems. There are several major capital improvements on the horizon that will need to be funded via increases to utility user charges. The City is also actively seeking suitable property to expand the WWTP, relocate the Water Treatment Plant and establish new well fields in the future. All three utility rates were raised effective July of 2008. The increases were as follows: Water 6.5%, Wastewater 20%, and Storm Water 7.5%.

Construction of the Allison Inn commenced during the 2007-08 fiscal year. The Inn will feature 85 guest rooms, meeting rooms, a spa, and a restaurant and lounge on an extensively landscaped 35-acre site. The opening date is set for August of 2009. The development of this property will generate more property and hotel/motel tax revenue for the City, as well as draw more money into the local economy. Along with this development, new housing was expected to be constructed as well. These plans have been put on hold for a few years until the housing market picks up again.

More detail about the impacts of the economy on the City is found in the Letter of Transmittal.

REQUESTS FOR INFORMATION

This financial report is designed to provide a general overview of the City's finances for those with an interest in the government's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to:

Finance Director
City of Newberg
PO Box 970
Newberg, OR 97132

**Comprehensive Annual Financial Report
Executive Summary**

For the full report, please contact the Finance Department at (503) 537-1216 or click [here](#) to open the document or visit the City’s website at <http://ci.newberg.or.us/page.asp?id=120>.

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NEWBERG CITY COUNCIL MEETING INFORMATION

DATE of Meeting: December 1, 2008

Prepared by: Norma Alley

Councilors	Roll Call	MOTION Topic: Consent Calendar – Res. 2783, 2816, 2819, 2820, Council Minutes 11/3/2008	ORDINANCE NO. 2008-2708 Topic: Bypass Interchange Overlay District	RESOLUTION NO. 2008-2818 Topic: Annual Financial Report	Res/Ord/Order # _____ Topic: _____	Res/Ord/Order # _____ Topic: _____	Res/Ord/Order # _____ Topic: _____	Res/Ord/Order # _____ Topic: _____
ANDREWS, Bob, Mayor	X	YES	YES	YES				
BOYES, Mike	X	YES	YES	YES				
CURRIER, Roger	X	YES	YES	YES				
LARSON, Bob	X	YES	YES	YES				
RIERSON, Bart	X	YES	YES	YES				
SHELTON, Marc	X	YES	YES	YES				
VACANT								
ROLL CALL VOTES		YES: 6 NO: 0 Absent: 0 Abstain: 0 Vacant: 1	YES: 6 NO: 0 Absent: 0 Abstain: 0 Vacant: 1	YES: 6 NO: 0 Absent: 0 Abstain: 0 Vacant: 1	YES: ____ NO: ____ Absent: ____ Abstain: ____ Vacant: ____	YES: ____ NO: ____ Absent: ____ Abstain: ____ Vacant: ____	YES: ____ NO: ____ Absent: ____ Abstain: ____ Vacant: ____	YES: ____ NO: ____ Absent: ____ Abstain: ____ Vacant: ____
Department:			Planning	Finance				
CHANGES: (Yes/No)		No	Yes	No				
MOTION (1st/2nd):		Rierson/Currier	Currier/Larson	Larson/Shelton				

CITY RECORDER:

- Email Meeting Information Sheet and materials received at meeting to applicable departments for processing of Council action items.
- Place originals of materials received at meeting in corresponding packet file for the record.
- Place Audio recordings on the website, except Executive Session recordings get placed in City Manager directory.

CITY DEPARTMENTS: WITHIN 48 HOURS - Route to City Recorder for Signature (verify changes, if any):

- IF ANY CHANGES, CORRECTIONS ARE TO BE MADE BY DEPARTMENT ORIGINATING DOCUMENT.
- Print final Orders/Ordinances/Resolutions and attachments on 100% cotton white bond paper (excluding RCA).
- IF NOT ADOPTED, route hard copy to City Recorder w/ following notation PRINTED ON TOP - "FAILED TO PASS (DATE)".
- Route to City Recorder for collection of signatures.

CITY RECORDER: * Route signed copies of documents to respective departments; * Place originals of orders/ordinances/resolutions in City Vault & Index appropriately; * Transfer FINAL order/ordinance/Resolution into appropriate City Recorder Computer Directory.

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Golf Carts Low-Speed Vehicles

**Work Session Presentation to City Council
By City Attorney Terrence D. Mahr
December 1, 2008**



Introduction

- There is a difference in regulations between the low-speed (“LS”) vehicles and golf carts
- Golf carts are usually not qualified to be LS vehicles because of the lack of equipment
- The City can allow golf carts on public roads in connection with golf courses

Introduction – *cont'd*

- LS vehicles with proper equipment and licenses can go on public roads that have speed limits of 35 mph or under
- Cities can make special allowances for LS vehicles on roads with speed limits higher than 35 mph

Introduction – *cont'd*

- Certain exemptions occur for people with disabilities to operate golf carts and similar vehicles within limits:
 - No faster than 15 mph
 - Not on highways with speed limits higher than 25 mph
 - Not after dusk

A large, light-colored rock sign for Chehalem Glenn Golf Course. The sign features a stylized logo of a golf club head and shaft above the text. The text is in a mix of script and sans-serif fonts. The sign is set in a landscaped area with a stone border and some greenery. In the background, there is a lush green golf course, a paved path, and a dense forest of evergreen trees under a clear sky. A tree with yellowing leaves is on the right side of the frame.

Chehalem Glenn
GOLF COURSE

Sherwood City Manager Jim Patterson's LS Vehicle:



Golf Carts v. LS Vehicle

- **ORS 801.295: Definition of a Golf Carts**

- “Golf cart” means a motor vehicle that:

- (1) Has not less than three wheels in contact with the ground;

- (2) Has an unloaded weight less than 1,300 pounds;

- (3) Is designed to be and is operated at not more than 15 miles per hour; and

- (4) Is designed to carry golf equipment and not more than two persons, including the driver. [1983 c.338 §49]

Golf Carts v. LS Vehicle

- **ORS 801.331: Definition of a “LS” (Low-Speed) Vehicle**
- *These vehicles are generally electric powered. They are subject to the Federal Motor Vehicle Safety Standard No. 500 (49 CFR 571.500).*
 - A Low-Speed Vehicle is a four-wheeled motor vehicle with a maximum speed of more than 20 miles per hour but not more than 25 miles per hour. This standard requires low-speed vehicles to be equipped with headlamps, stop lamps, turn signal lamps, tail lamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seatbelts and vehicle identification numbers.
 - Low-Speed Vehicles must be licensed
 - For more information about safety standards contact ODOT Transportation Safety at (503) 986-4198.

Golf Carts on Highways

- **810.070 Use of golf carts on highways; rules.**
- A road authority, on any of its own highways that are located adjacent to a golf course, **may permit the operation of golf carts between the golf course and the place where golf carts are parked or stored or located within or bounded by a real estate development.** All of the following apply to the authority granted under this section:
 - (1) Exercise of the authority granted under this section must be by means of **an ordinance.**
 - (2) The authority granted under this section may only be exercised where the combined operation of golf carts and regular vehicle traffic can be **accomplished safely.**
 - (3) A road authority shall **prescribe rules and shall regulate the combined operation of golf carts and vehicles when permitted under this section.** The rules may establish speed limits and other operating standards but shall not require that golf carts conform with the vehicle equipment laws under the vehicle code.

Golf Carts on Highways

- **810.070 – cont'd**
- (4) A designation of combined operation under this section or rules instituted under this section **are effective when appropriate signs giving notice thereof are posted** along the affected highway and are not effective before such posting.
- (5) If a designation is made under this section to permit combined operation, the golf carts operated in accordance with the designation and rules adopted by the road authority **qualifies for the exemptions under ORS 820.210.**
- (6) This section **only applies to real estate developments** that have single or multiple family residences whose owners or occupants are eligible for membership in or the use of one or more golf courses within the development by virtue of ownership or occupancy of a residential dwelling unit in the development.
- (7) This section neither grants authority to nor limits the authority of the Department of Transportation. [1983 c.338 §151; 2003 c.757 §2]

Golf Carts Exemptions

- **820.210 Registration exemptions for golf carts and similar vehicles.**
- **(1) Golf carts operated in accordance with an ordinance adopted under ORS 810.070 are exempt from registration requirements under the vehicle code.**
- **(2) Golf carts or substantially similar vehicles** that are operated by persons with **disabilities at not more than 15 miles an hour are exempt** from registration requirements under the vehicle code.
- **(3) Notwithstanding any provision of the vehicle code relating to vehicle equipment and condition, upon designation of a portion of a highway becoming effective under an ordinance adopted under ORS 810.070, it shall be lawful to drive golf carts on highways or portions thereof so designated in accordance with the rules and regulations prescribed by the local authority.** [1983 c.338 §780; 2007 c.70 §349]

Golf Cart Ordinances

- Operation of golf carts on public highway in connection with golf courses:
 - City of Wilsonville has done this in connection with Charbonneau District
 - Passed in 1982
 - Had minimal regulations requiring display of slow-moving vehicle emblem
 - Said that individuals shall assume full risk and City shall not be liable

Golf Cart Ordinances – *cont'd*

- City of Woodburn passed ordinance in 2000
 - Requirements:
 - Possession of Oregon Driver's License
 - Operate only in daylight
 - Shall serve all “applicable” state traffic law
 - Maintained exemptions from registration, licensing, and equipment
 - Liability shall be at the total risk of the operator; City assumes no liability

LS Vehicles on Highway

- **820.220 Operation of low-speed vehicle in prohibited area; penalty.**
- **(1) A person commits the offense of operation of a low-speed vehicle in a prohibited area if the person is a person with a disability and the person operates a golf cart or substantially similar motor vehicle on any highway with a speed designation greater than 25 miles per hour.**
- **(2) The offense described in this section, operation of low-speed vehicle in prohibited area, is a Class D traffic violation. [1983 c.338 §781; 2007 c.70 §350]**

LS Vehicles on Highway – *cont'd*

- **811.512 Unlawfully operating low-speed vehicle on highway; penalty.**
- *A person commits the offense of unlawfully operating a low-speed vehicle on a highway without City regulations as long as it is on a highway with a speed limit of 35 mph or less*
- (1) A person commits the offense of unlawfully operating a low-speed vehicle on a highway if the person operates a low-speed vehicle on a highway that has a speed limit or **posted speed of more than 35 miles per hour.**
 - *Therefore, if this person has a LS vehicle, it can be operated on the road with speed limit at or less than 35 mph.*
 - *Also, disability golf cart permits: Persons wishing to drive on the public roads without an ordinance relating to the golf courses would obtain a disability golf cart permit from DMV and then they could drive not more than 15 mph on highways not designated for speed limits not greater than 25 mph.*

LS Vehicles on Highway – *cont'd*

- **811.512 Unlawfully operating low-speed vehicle on highway; penalty – *cont'd***
- (2) Notwithstanding subsection (1) of this section, a city or county may adopt an ordinance allowing operation of low-speed vehicles on city streets or county roads that have speed limits or posted speeds of more than 35 miles per hour.
- (3) The offense described in this section, unlawfully operating a low-speed vehicle on a highway, is a Class B traffic violation. [2001 c.293 §8]

For “easy-go,” low-speed vehicles: **Premier Lift Truck Service**

- 9585 SW Tualatin Sherwood
Tualatin, OR 97062
Tel: (503) 691-1430

Mon-Fri 8:00am- 5:00pm

<http://premierlift.com/>



Golf Carts on Public Highways

■ Things To Do:

1. Establish Code Provisions allowing operations of golf carts on public roads in developments adjacent to the golf course
2. Adopt applicable state traffic laws
3. Retain exemptions from licensing, registration, and equipment
4. Waiver of liability for operator
5. Provide for cost of posting signs

Golf Carts on Public Highways

■ Things To Do – *cont'd*:

6. Council wishes to allow golf carts on all areas of the street under certain regulations:
 - Must need new legislation
 - A number of Cities (McMinnville and others) are interested in this and would be something to surface in this new legislation session
 - Allow golf cart use adjacent to golf courses
7. Pass ordinance to allow code provisions and regulations
8. Allow LS vehicles on all streets in the city
9. Pass ordinance allowing regulations

Golf Carts on Public Highways

- What if the Council doesn't adopt an ordinance allowing operation of golf carts on public highways?
 - They are considered motor vehicles that cannot be operated on public highways
 - Except with exceptions with disability permits in certain circumstances



Low-Speed Vehicles

- LS Vehicles can be operated on public highways without the necessity of the passage of an additional ordinance

City Council Meeting
Date: December 1, 2008
Re: Public Comments
No: Handed in by Joanne Wiith

This is the last month that personalized bricks can be ordered.
Contact Rozeann Dey at 503.538.4804 to order yours now.

This Sunday afternoon we're hosting a wine & culinary pairing event at
Hunters Ridge Grill in Sherwood.

So far 30 tickets have been sold at \$75 per person.

Contact Jan Floren at 971. 246

2199

Our 9th annual bake sale is at Darlyn Adams' home Dec. 13 & 14.

Come early for the best selection of holiday baked goods.

**Items to
Include in
the Record**

12/01/08

Agenda Item VII – 1

(Ordinance No. 2008-2703)



Comcast Cable
1710 Salem Industrial Drive NE
Salem, OR 97301

November 26, 2008

Mr. Dan Danicic, City Manager
c/o Dawn Wilson, Senior Paralegal
City Attorney's Office, City of Newberg
PO Box 970
Newberg, OR 97132

Re: AN ORDINANCE ESTABLISHING PROVISIONS FOR UTILITY ACCESS TO
AND USE OF RIGHTS OF WAY AND REPEAL ORDINANCE 1493 AND CITY
CODE SECTIONS 96.30 AND 96.31.

Dear Mr. Danicic:

We understand the above referenced Ordinance is scheduled for a public hearing on December 1, 2008. After review of the proposed Ordinance and participation in the informal discussions with city staff and other utility providers, we believe that the proposed Ordinance creates a new set of regulatory procedures and requirements for companies utilizing the public right of ways within the city of Newberg. As such, Comcast would like to provide the following comments for your consideration.

Section 11(D) of the proposed Ordinance states "Payments required by this Section shall be reduced by any franchise fee payments received by the City, but in no case will be less than \$0." Since Comcast pays a franchise fee of five percent (5%) of gross revenues under its cable franchise with the City, it is our understanding that the amount of any privilege tax would be offset by these franchise fee payments.

Further, Section 5(E) of the proposed Ordinance allows the City to continue with or enter into franchise agreements that are consistent with federal law and may be in conflict with "the terms of this Chapter with the review and approval of the City Council." Comcast's position is that the current franchise with the City, which is a negotiated agreement, is and would be controlling over the proposed Ordinance. Comcast supports the continued opportunity to negotiate cable franchise agreements with the City in the future as allowed by federal law.

Mr. Dan Danicic, City Manager

November 26, 2008

Page 2

In addition, we note that Comcast's Digital Voice service is not classified as a telecommunications service, and the definition of "telecommunications services" in the proposed Ordinance expressly excludes cable service. We have serious concerns if the proposed privilege tax is imposed upon Comcast's Interconnected VoIP service, Comcast Digital Voice ("CDV").

There is no additional burden placed on the right of way for our deployment of CDV service as we currently have a franchise with the City to occupy its right of ways. In light of the fact that there are no additional facilities and burdens placed upon the public right of way that have been installed, constructed or which are dedicated exclusively to providing CDV service, and that it is not a "telecommunication service," we believe there is no lawful justification to impose the privilege tax upon our CDV and other services.

Thank you for consideration of these comments and please do not hesitate to contact me with any questions you may have.

Sincerely,

Doug Cooley, Manager
Government Affairs

cc: Sanford Inouye, Comcast
Mayor Andrew and members of the City Council

David L. Mielke
National Municipal
Affairs Manager



December 1, 2008

Mail Code: HQE02E70
600 Hidden Ridge
P.O. Box 152092
Irving, TX 75038

Phone 972 718-3435
Fax 972 719-7948
david.mielke@verizon.com

Honorable Mayor Bob Andrews
Council President Bob Larson
Councilor Roger Courier
Councilor Jeff Palmer
Councilor Marc Shelton
Councilor Bart Rieson
Councilor Mike Boyes
City of Newberg, Oregon
414 E. First Street
Newberg, OR 97132

Sent via e-mail
dawn.wilson@ci.newberg.or.us

Re: City of Newberg – Ordinance 2008-2703 Provision for Utility Access To and Use of Rights of Way; Objectionable Provisions

Dear Mayor Andrews and City of Newberg Councilors:

Verizon appreciates the opportunity to work with city staff and other utilities on the proposed right of way ordinance. However, Verizon continues to have concerns with a number of ordinance requirements because the requirements are prohibited under ORS 221.515 and violate other state laws, usurp Verizon's tariff and are vague with respect to its application. Verizon therefore requests the City Council modify the proposed ordinance as outlined in detail in the attached "redline" draft of the ordinance. For your convenience, a summary of the objectionable ordinance requirements is provided below.

1.) Section 11(C) - Attachment Fee - Privilege Tax should explicitly exclude wireless providers because any tax on wireless providers is a new tax that should be enacted legislatively by a vote of the citizens of Newberg. As drafted the ordinance allows the city council to unlawfully impose a privilege tax based on the gross receipts of a wireless provider by resolution. In addition, the requirement is extremely narrow in that whenever an antenna is attached to a pole it would generally require wires to connect the antennae to the access point. Also, to the extent that the city would require a wireless provider to place facilities in the right of way the city could force imposition of the privilege tax on wireless providers

Honorable Mayor Bob Andrews and Councilors
December 1, 2008
Page 2

2.) Section 11(A)(3) – As drafted this section unfairly allows the city to effectively impair Verizon's CATV franchise agreement by requiring gross receipts that are specifically excluded from the 5% franchise fee to be subject to the 5% privilege tax. Accordingly, Verizon proposes additional language that would exclude gross receipts/revenues that are not currently subject to a franchise fee under the city's CATV franchise agreement from the proposed privilege tax.

Also, any applicability of the privilege tax to wireless providers or to gross receipts that are not currently subject to the existing franchise fee/privilege should only be implemented after approval by a majority vote of the citizens of Newberg

3.) The proposed ordinance, particularly the License Application, includes technical requirements which would require Verizon to agree to a one-sided franchise like agreement without an opportunity to reserve applicable rights to challenge unlawful application or enforcement by the City. These technical requirements as outlined in the attached redline include but are not limited to

- relocation and undergrounding requirements that usurp or are in conflict state law and Verizon's tariff
- inequitable reimbursement of audit costs
- perpetual statute of limitations that should be limited to 3 years
- overly broad and unreasonable indemnification

Should the City elect not to modify the proposed ordinance as outlined in Verizon's "redlined" draft, Verizon herewith reserves its right to challenge ordinance requirements and respectfully requests that the License Application be changed by deleting the requirement to abide by the requirements of the ordinance and to only require certification as to the accuracy of the information in the License Application.

Verizon appreciates your consideration of the attached changes.

Sincerely,



David Mielke

C: Gene Eng – Beaverton, OR
Richard Stewart - Irving, TX
Terrance Mahr – Newberg, OR

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: 2008, December 1

Order _____ Ordinance XX Resolution _____ Motion _____ Information _____
No. No. 2008-2703 No.

SUBJECT: An Ordinance establishing provisions for utility access to and use of rights of way and repeal Ordinance No. 1493 and City Code Sections 96.30 and 96.31 and establishing an additional subsection under Chapter 96 (Streets and Sidewalks) to include the provisions of this ordinance.

Contact Person (Preparer) for this Ordinance: Dawn Wilson

Dept.: City Attorney's Office

File No.:
(if applicable)

RECOMMENDATION:

Adopt Ordinance No. 2008-2703

BACKGROUND:

Three "utility provider/operator" meetings were held on 05/13/08, 08/05/08, and 11/12/08 in order to give them an opportunity to be heard, have questions answered, and have issues and concerns on franchising and right-of-way usage addressed verbally and/or through this ordinance. An executive session was held on August 18, 2008, to discuss potential litigation on this ordinance. Additionally, a work session was held on October 6, 2008, to discuss the proposed ordinance and input received from utility providers/operators.

Attorney Nancy Werner of Beery, Elsner, and Hammond was hired by the City to provide legal counsel on telecommunications and draft this ordinance based on feedback received from the utility providers/operators, and the City Council, as well as ensuring compliance with federal and state regulations. Nancy has provided the City with outstanding service and has attended all meetings, except for the meeting on May 13, 2008.

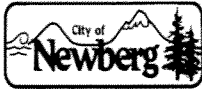
FISCAL IMPACT: The privilege tax will remain at the franchise fee rate for each respective utility, which is revenue-neutral. The ordinance permits the Council to set by resolution other fees on utilities that own facilities in the right of way but do not provide service to customers in the City and therefore are not subject to the revenue-based privilege tax. The ordinance also permits the Council to set by resolution a fee for utilities that own facilities mounted on structures in the right of way, such as antennas. If either fee is enacted and there are providers in the City subject to these fees, this would generate additional revenue.

STRATEGIC ASSESSMENT: The granting of the ordinance provisions will better address the jurisdiction and management of rights of way in the City. This will result in more clear regulations for the various utilities and service providers/operators that own facilities in the City's rights of way.

City of Newberg: ORDINANCE NO. 2008-2703

O:\Legal\Franchises\Verizon_Telephone\Record\Ord2703_Newberg ROW Ordinance - Submitted on 11-18-2008 for 12-01-2008 CC Mtg (2) W_Verizon

Comments.DOC -> WINDOWS\Temporary Internet Files\OLK475\Ord2703_Newberg ROW Ordinance - Submitted on 11-18-2008 for 12-01-2008 CC Mtg (2).DOC PAGE 1



ORDINANCE NO. 2008-2703

AN ORDINANCE ESTABLISHING PROVISIONS FOR UTILITY ACCESS TO AND USE OF RIGHTS OF WAY AND REPEAL ORDINANCE NO. 1493 AND CITY CODE SECTIONS 96.30 AND 96.31 AND ESTABLISHING AN ADDITIONAL SUBSECTION UNDER CHAPTER 96 (STREETS AND SIDEWALKS) TO INCLUDE THE PROVISIONS OF THIS ORDINANCE

RECITALS:

1. A franchise with Verizon for telephone services expired on April 1, 2008, but Verizon has been receptive to continuing to pay its franchise fee so that discussions and public meetings may held during the drafting of this ordinance.
2. The City currently has franchises with all other utilities. All utilities will be affected by this right-of-way ordinance, except for Comcast on its cable television services due to specific FCC regulations.
3. This ordinance is in lieu of renewing franchises and entering into new franchises with utility providers/operators, except for services pertaining to cable television.
4. Three "utility provider/operator" meetings were held on 05/13/08, 08/05/08, and 11/12/08 in order to give them an opportunity to be heard, have questions answered, and have issues and concerns on franchising and right-of-way usage addressed verbally and/or through this ordinance.
5. An executive session was held on August 18, 2008, to discuss potential litigation on this ordinance.
6. A work session was held on October 6, 2008, to discuss the proposed ordinance and input received from utility providers/operators.
7. Attorney Nancy Werner of Beery, Elsner, and Hammond LLP was hired by the City to provide legal counsel on telecommunications and draft this ordinance based on feedback received from the utility providers/operators, staff, and the City Council, as well and ensuring compliance with federal and state regulations. Nancy Werner has attended all meetings, except for the utility provider/operator meeting on May 13, 2008.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

Section 1. Purpose and Intent.

The purpose and intent of this Chapter is to:

- (A) Permit and manage reasonable access to the public rights of way of the City for utility purposes and conserve the limited physical capacity of those public rights of way held in trust by the City, consistent with applicable state and federal law;
- (B) Assure that the City's current and ongoing costs of granting and regulating access to and the use of the public rights of way are fully compensated by the persons seeking such access and causing such costs;
- (C) Secure fair and reasonable compensation to the City and its residents for permitting use of the public rights of way;
- (D) Assure that all utility companies, persons and other entities owning or operating facilities and/or providing services within the City register and comply with the ordinances, rules and regulations of the City;
- (E) Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
- (F) Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City; and
- (G) Comply with applicable provisions of state and federal law.

SECTION 2. JURISDICTION AND MANAGEMENT OF THE PUBLIC RIGHTS OF WAY.

- (A) The City has jurisdiction and exercises regulatory management over all public rights of way within the City under authority of the City charter and state law.
- (B) The City has jurisdiction and exercises regulatory management over each public right of way whether the City has a fee, easement, or other legal interest in the right of way, and whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- (C) The exercise of jurisdiction and regulatory management of a public right of way by the City is not official acceptance of the right of way, and does not obligate the City to maintain or repair any part of the right of way.
- (D) The provisions of this Chapter are subject to and will be applied consistent with applicable state

and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

SECTION 3. REGULATORY FEES AND COMPENSATION ~~NOT A TAX.~~

(A) ~~The fees tax and costs provided for in this Chapter, and any compensation charged and paid for use of the public rights of way provided for in this Chapter, are in lieu of franchise fees or privilege tax as authorized under stated statutes separate from, and in addition to, any and all federal, state, local, and City charges as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.~~

NOTE: Change is requested to outline the assessment is a tax, is in lieu of existing franchise assessment, is not intended to allow the city to impose other taxes or fees and does not include a third fee: compensation charged and paid for use of the of the public ROW. Also, other sections in the ordinance refer to the compensation as being a license or privilege tax. In addition it is necessary to outline what the fees and costs that are imposed by the ordinance are for and what the fees and costs are separate and in addition to. I.E. are the fees for the use of the ROW, to conduct business in the city, business license fee, gross receipts tax etc.

(B) The City has determined that any fee provided for by this Chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners.

(C) The fees and costs provided for in this Chapter are subject to applicable federal and state laws.

Section 4. Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive.

Cable Service: is to be defined consistent with federal laws and means the one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

City: the City of Newberg, an Oregon municipal corporation, and individuals authorized to act on the City’s behalf.

City Council: the elected governing body of the City of Newberg, Oregon.

City Facilities: City or publicly-owned structures or equipment located within the right of way or public easement used for governmental purposes.

License: the authorization granted by the City to a utility operator on a non-exclusive basis, to use public rights-of-way within the city pursuant to this Chapter.

NOTE: Change requested to clarify that the License is for the use of the public ROW, otherwise the City could require an imposition for the use of the ROW at a later date

Person: includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint stock company, trust, limited liability company, association or other organization, including any natural person or any other legal entity.

Private Communications System: a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private communications system" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

Public Utility Easement: the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. "Public utility easement" does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities.

Right of Way: includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks or parkland. This definition applies only to the extent of the City's right, title, interest and authority to grant a license to occupy and use such areas for utility facilities. Right-of-way does not include the airwaves for purposes of CMRS, broadcast television, DBS and other wireless providers, or easements or other property interests owned by a single utility or entity.

NOTE: Change requested to ensure that ROW does not include airwaves for cellular use or easements that have been for which prior rights may exist.

State: the State of Oregon.

Telecommunications Services: ~~means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received the transmission for hire, of information in electromagnetic frequency, electronic or optical form, including, but not limited to, voice, video or data, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. Telecommunications service includes all forms of telephone services and voice, data and video transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services; (4) over the air radio or television broadcasting to the public at large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct to home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996.~~

NOTE: Change requested for definitions to be consistent with the definition of telecommunications

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as used in the Telecommunications Act. As drafted any video, data or voice service that was not a cable service, or a video service that was excluded from cable franchises, are a telecommunication service including internet or information services. The term "information service" per the Telecommunications Act means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Utility Facility or Facility: any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights of way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

Utility Service: the provision, by means of utility facilities permanently located within, under or above the rights of way, whether or not such facilities are owned by the service provider, of electricity, natural gas, telecommunications services, cable services, water, sewer, and/or storm sewer to or from customers within the corporate boundaries of the City, and/or the transmission of any of these services through the City whether or not customers within the City are served by those transmissions.

NOTE: This definition is extremely broad and would require application of the ordinance to every wireless provider, internet provider, voip provider, DBS provider HAM radio operator gas and electric transmission, interstate services and possibly other businesses.

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Utility Operator or Operator: any person who owns, places, operates or maintains a utility facility within the City.

Work: the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

Section 5.

Licenses.

(A) License Required.

(1) Except those utility operators with a valid franchise agreement from the City, every person shall obtain a license from the City prior to constructing, placing or locating any utility facilities in the right of way.

(2) Every person that owns or controls utility facilities in the right of way as of the effective date of this Chapter shall apply for a license from the City within forty-five (45) days of the later of (1) the effective date of this Chapter or (2) the expiration of a valid franchise from the City, unless a new franchise is granted by the City prior to the expiration date or other

date agreed to in writing by the City.

(B) License Application. The license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, and the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this Chapter.

(C) License Application Fee. The application shall be accompanied by a ~~nonrefundable~~ application fee of \$XXX or deposit set by resolution of the City Council in an amount sufficient to fully recover all of the City's costs related to processing the application for the license.

NOTE: Change requested as deposits should not be required and the license fee should be refundable and Telecommunication Utilities can deduct the fee from any privilege tax in accordance with ORS 221.515 In addition the license fee should be a determinant amount included within the ordinance. Also, to the extent other telecommunication companies cannot deduct the application fee from the privilege tax the requirement is discriminatory and not competitively neutral per the requirements of Section 253 of the Telecommunications Act.

(D) Determination by City. The City shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this Chapter, the continuing capacity of the right of way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

(E) Franchise Agreements. If the public interest warrants, the City and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this Chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this Chapter with the review and approval of City Council. The franchisee shall be subject to the provisions of this Chapter to the extent such provisions are not in conflict with the franchise or provide additional obligations on the franchisee. To the extent the franchise provides terms that are more favorable or less burdensome than as outlined in this Chapter, such terms shall be applicable to all licensed Utility Operator.

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NOTE: Change is requested to ensure that discriminatory treatment is not provided to a utility that enters into a franchise agreement. The requirement as drafted allows the city to be discriminatory and not competitively neutral with respect to any and all requirements of this ordinance. Change to last sentence is requested to ensure that existing franchises are not impaired.

(F) Rights Granted.

(1) The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the Municipal Code and other applicable provisions of state or federal law, to use and occupy the public streets, alleys or highways construct, place, maintain and operate

utility facilities in the rights of way for the term of the license. Acceptance of the License does not waive a Utility Operator right to challenge or otherwise dispute the legality, validity, or enforceability of this Chapter or any changes to City ordinances, resolutions, rules or orders.

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NOTE: Change is requested for language to be consistent with the authority granted under ORS 221.420, 221.450 and 221.515. Addition of the last sentence is requested to ensure that the license does not preclude a utility from challenging the requirements of the ordinance when a certain interpretation, application or enforcement is made. Addition, is also requested to allow a utility to be granted a license if the utility signs the application with a specific or broad based reservation of rights.

(2) The license granted pursuant to this Chapter shall not convey equitable or legal title in the rights of way, and may not be assigned or transferred except as permitted in Section 6(K) of this Chapter.

(3) Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, police power or regulatory power of the City as may exist at the time the license is issued or thereafter obtained.

(G) Term. Subject to the termination provisions in Section 5(M) of this Chapter, the license granted pursuant to this Chapter will remain in effect for a term of five (5) years.

(H) License Non-Exclusive. No license granted pursuant to this Section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights of way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights of way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights of way. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

(I) Reservation of City Rights. Nothing in the license shall be construed to prevent the City from grading, paving, repairing and/or altering any right of way, constructing, laying down, repairing, relocating or removing City water or sewer facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. City shall communicate and coordinate its planned activities with Utilities Operator and use its best efforts to eliminate and minimize any temporary or permanent relocation necessary by the Utility Operator. All such work or improvements shall be done, if possible, so as to prevent or minimize impairment of the free use of said facilities by a Utility Operator. If avoidance of obstructions or impaired use of a Utility Operator facilities cannot be done without additional costs to the City, the Utility Operator may in lieu of removing or relocating its facilities as provided in Sections 7 (C), (D) and (E) of this Chapter, compensate the City for any additional costs to undertake such work necessary to avoid relocation of Utility Operator facilities. City shall provide Utility Operator(s) with such notice and opportunity to discuss such costs and alternatives as is reasonable and practicable under the

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circumstances prior to undertaking any such work in which Grantee is responsible for compensating the City for additional costs If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any right of way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in Sections 7(C), (D) and (E) of this Chapter, in a manner acceptable to the City, and subject to industry standard engineering and safety codes.

NOTE. Change requested to allow for a utility to not have to relocate its facilities when other options may be available in order to minimize relocation and overall costs to all parties.

(J) Multiple Services.

(1) A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and privilege tax requirements of this Chapter for the portion of the facilities and extent of services delivered over those facilities.

(2) A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate license for each utility service, provided that it gives notice to the City of each utility service provided or transmitted and pays the applicable privilege tax for each utility service.

NOTE: reference to tax applicable to each service which would include wireless and would be disproportionate with respect to long distance companies or leased network operators. Therefore, the tax would be discriminatory. Also, what differentiation is necessary to classify services under a respective utility service and who makes such determination? Per the definitions a communication service that is not a cable service would be a telecommunications service and not an information service.

(K) Transfer or Assignment. To the extent ~~permitted~~ required by applicable state and federal laws or franchise agreement, the licensee shall obtain the written consent of the City prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment. If a license is transferred or assigned, the transferee or assignee shall become responsible for all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

NOTE: Change requested to ensure that transfer approval is not necessary unless required by state or federal or by the terms of an existing franchise agreement. Furthermore, it is necessary to know from which utility providers the city will require its written consent.

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(L) Renewal. At least ninety (90), but no more than one-hundred eighty (180), days prior to the expiration of a license granted pursuant to this Section, a licensee seeking renewal of its license shall submit a license application to the City, including all information required in Section 5(B) and the application fee required in Section 5(C). The City shall review the application as required by Section 5(D) and grant or deny the license within ninety (90) days of submission of the application. If the City determines that the licensee is in violation of the terms of this Chapter at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

(M) Termination.

NOTE: City does not have the authority to require a telecommunications provider to cease providing services or to impose requirements which would impair the provisioning of services. Such authority is the exclusive authority of the OPUC and FCC.

(1) Revocation or Termination of a License. The City Council may terminate or revoke the license granted pursuant to this Chapter for any of the following reasons:

- (a) Violation of any of the provisions of this Chapter;
- (b) Violation of any provision of the license;
- (c) Misrepresentation in a license application;
- (d) Failure to pay taxes, compensation, fees or costs due the City under this chapter after final determination of the taxes, compensation, fees or costs;

NOTE: Change requested to ensure that the city does not use this chapter to collect taxes and fees unrelated to the management of the ROW.

- (e) Failure to restore rights of way after construction as required by this Chapter or other applicable state and local laws, ordinances, rules and regulations;
- (f) Failure to comply with technical, safety and engineering standards related to work in the rights of way; or
- (g) Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.

(2) Standards For Revocation Or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

- (a) The egregiousness of the misconduct;
- (b) The harm that resulted;
- (c) Whether the violation was intentional;
- (d) The utility operator's history of compliance; and/or
- (e) The utility operator's cooperation in discovering, admitting and/or curing the violation.

(3)(3) Notice And Cure. The City shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the City Manager or designee determines that the utility operator's response is inadequate, the City Manager or designee shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked the necessary course of action.

NOTE: Section does not include any appeal rights and accordingly violates a utility operator's due process rights. Also, Change requested to provide the City Council with the necessary latitude to resolve the matter. As drafted the City Councils action would be limited to termination or revocation.

Section 6. Construction and Restoration.

(A) Construction Codes. Utility facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including the National Electrical Code and the National Electrical Safety Code.

(B) Construction Permits.

(1) Except as set forth in Section 6(B)(2)-(3), no person shall construct, install, or perform any work on utility facilities within the rights of way without first obtaining all required permits. Permits shall not be required for 1) Customer service connections/drops, repairs or maintenance that does not require cutting or breaking of the roadway, curb or sidewalk, and 2) Routine maintenance or repair of Equipment, and the installation of new replacement cables or wires on existing aerial facilities, when the installation, maintenance or repair will not impact vehicular traffic by closing or blocking a lane of vehicular travel for more than two (2) hours. The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received the license required by this Chapter, or has a current franchise with the City, and all applicable fees have been paid.

NOTE: Change requested to ensure that permits are not necessary for service drops and maintenance activities that have not historically required a permit. Also need assurance that PE certification is not required on any telecommunication construction or traffic control plans as telecommunication providers are exempt from PE certification under state law.

(2) In the event of an emergency, a utility operator may undertake work in the right of way without first obtaining a permit, provided that the utility operator notify the City immediately or as soon as reasonably possible, and obtain any required permits as soon as reasonably possible after cessation of the emergency. For purposes of this Section, "emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore service or prevent imminent harm to persons or property.

(3) The City Manager or designee is authorized to adopt policies setting forth additional exceptions to the permit requirement set forth in Section 6(B)(1), and to develop and revise right of way permits, standard permit conditions and construction standards necessary to insure that all work performed in the public right of way is conducted in a manner that minimizes disturbance to the public, controls quality of the repairs and otherwise protects the public interest.

(C) Unless otherwise provided in a franchise agreement or agreed to in writing by the City, a performance bond or other form of surety acceptable to the City equal to at least 100% of the estimated cost of the work within the rights of way of the City shall be provided before construction is commenced.

(1) The performance bond or other form of surety acceptable to the City shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the City, including restoration of rights of way and other property affected by the construction.

(2) The performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:

- (a) Timely completion of the work;
- (b) That the work is performed in compliance with applicable plans, permits, technical codes and standards;
- (c) Proper location of the facilities as specified by the City;
- (d) Restoration of the rights of way and other property affected by the work; and
- (e) Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

(D) A utility operator shall preserve and protect from injury other utility operators' facilities in the rights of way, the public using the rights of way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or utilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all damage to public or private property resulting from its failure to comply with the requirements of the permit authorizing the work to be completed by the utility operator or with applicable laws, ordinances and regulations.

(E) Restoration.

(1) When a utility operator, or any person acting on its behalf, does any work in or affecting any public rights of way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the same or better condition as existed before

the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations, unless otherwise directed by the City and as determined by the City Manager or designee.

(2) If weather or other conditions beyond the utility operator's control do not permit the complete restoration required by the City, the utility operator shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the utility operator's sole expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.

(3) If the utility operator fails to restore rights of way or property as required in this Chapter, the City shall give the utility operator written notice and provide the utility operator a reasonable period of time not less than ten (10) days, unless an emergency or threat to public safety is deemed to exist, and not exceeding thirty (30) days to restore the rights of way or property. If, after said notice, the utility operator fails to restore the rights of way or property as required in this Chapter, the City shall cause such restoration to be made at the expense of the utility operator.

(4) A utility operator or other person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights of way or property.

(F) Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this Chapter and all other applicable state and City codes, ordinances, rules and regulations. Every utility operator shall cooperate with the City in permitting the inspection of utility facilities upon request of the City. The utility operator shall perform all testing, or permit the City to perform any testing at the utility operator's expense, required by the City to determine that the installation of the utility operator's facilities and the restoration of the right of way comply with the terms of this Chapter and applicable state and City codes, ordinances, rules and regulations.

NOTE: What testing is anticipated under this section? Telecommunication Utilities are exempted from the city imposing such costs under ORS 221.515.

(G) Coordination Of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the rights of way.

(1) Prior to January 1 of each year, utility operators shall provide the City with a schedule of known proposed construction activities for that year in, around or that may affect the rights

of way.

(2) Utility operators shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in rights of way.

(3) All construction locations, activities and schedules within rights of way shall be coordinated as ordered by the City Manager or designee, to minimize public inconvenience, disruption, or damages.

Section 7. Location of Facilities.

(A) Location of Facilities. Unless otherwise agreed to in writing by the City, whenever ~~any~~ all existing electric utilities, cable facilities or telecommunications facilities are located underground within a right of way of the City, the utility operator with permission to occupy the same right of way shall locate its facilities underground. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of 35,000 volts or to pedestals, cabinets or other above-ground equipment of any utility operator. The City reserves the right to require written approval of the location of any such above-ground equipment in the right of way where the utility operator's location or proposed location does not comply with applicable state and City codes, ordinances, rules and regulations.

NOTE: Change requested as such requirement usurps ORS 758.210 and as "any" provides for discriminatory treatment between existing facilities and new facilities and would violate Sections 253 and 224 of the telecommunications act.

(B) Interference with Rights of Way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the existing use of the rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the rights of way. All use of the rights of way shall be consistent with City codes, ordinances and regulations.

NOTE: Change requested to prevent city utilities or other utilities from requiring relocation of existing utilities for the placement of new utilities.

(C) Relocation of Utility Facilities.

(1) A utility operator shall, at no cost to the City, relocate its aerial utility facilities underground when required to do so in writing by the City, consistent with applicable state and federal law.

(2) A utility operator shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right of way when requested to do so in writing by the City. Nothing herein shall be deemed to preclude the utility operator from requiring or requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs, agreements or otherwise, provided that

such reimbursement or compensation shall not delay the utility operator's obligation to comply with this Section in a timely manner.

(3) The City shall provide written notice of the amount of time for removal, relocation, change, alteration or undergrounding. City shall work with the utility to ensure the necessary time is provided for all utilities and to outline the timing and order that is necessary for any one utility to meet the notice requirement. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the City, and by the date reasonably established by the City after consultation with the affected utility operator(s), the City may cause the utility facility to be removed, relocated, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

Change requested to ensure that the city does not unilaterally establish a time for completion that will not accommodate a utilities time to coordinate completion amongst multiple utilities, allow for necessary engineering, material procurement construction and removal. Also, requirement that provides authority to remove a utilities facilities usurps authority of state law (e.g. 221.515, tampering with utility facilities, 758.210 forced undergrounding.), a utility's tariff and case law.

(D) Removal of Unauthorized Facilities.

(1) Unless otherwise agreed to in writing by the City Manager or designee, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains ~~any abandoned or~~ unauthorized utility facility within a right of way shall, at its own expense, remove the facility and restore the right of way.

NOTE: change requested to ensure that facilities that have been historically abandoned in place are not required to be removed. In addition, 2 below defines unauthorized facility which incorporates situations when abandoned facilities are not authorized.

(2) A utility system or facility is unauthorized under any of the following circumstances:
(a) The utility facility is outside the scope of authority granted by the City under the license, franchise or other written agreement. This includes facilities that were never licensed ~~or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated.~~ This does not include any facility for which the City has provided written authorization for abandonment in place.

NOTE: Change requested as City does not have authority to require removal of facilities which were properly approved but for which franchise or license is expired. Such requirement in effect impairs the previous contract and leverages the city authority for a utility to agree to any terms whether or not such requirements are related to the management of the right-of-way.

(b) The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one year. A utility operator may overcome this presumption by presenting plans for future use of the facility.

(c) The utility facility is improperly constructed or installed or is in a location not permitted by the license, franchise or this Chapter.

(d) The utility operator is in violation of a material provision of this Chapter and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City extends such time period in writing.

(E) Removal By City.

(1) The City retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the public rights of way of the City, without notice, as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency and will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations.

NOTE: This authority usurps state law, one call and tampering with utility facilities statutes.

(2) If the utility operator fails to remove any facility when required to do so under this Chapter, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove shall survive the termination of the license or franchise.

NOTE: This authority usurps state law tampering with utility facilities and places city employees under potentially extreme safety risks., In addition, such action by the City would be an unlawful taking of property.

(3) The City shall not be liable to any utility operator for any damage to utility facilities by the City or its contractor in removing, relocating or altering the facilities pursuant to paragraphs (B), (C) or (D) of this Section 7 or undergrounding its facilities as required by paragraph (A) of this Section 7, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those paragraphs, unless such damage arises directly from the City's negligence or willful misconduct.

(F) Engineering Designs and Plans. The utility operator shall provide the City with two complete sets of engineered plans in a form acceptable to the City showing the location of all its utility

facilities in the rights of way after initial construction if such plans materially changed during construction and shall provide two updated complete sets of plans upon request of the City, but not more than once per year.

Section 8. Leased Capacity.

A utility operator may lease capacity on or in its systems to others, provided that, upon request, the utility operator provides the City with the name and business address of any lessee. The utility operator shall not be required to provide such information if the utility operator does not have such information or if disclosure is prohibited by applicable law or a valid agreement between the utility operator and the lessee.

Section 9. Maintenance.

Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

Section 10. Vacation.

If the City vacates any right of way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the right of way unless the City reserves a public utility easement, which the City shall make a reasonable effort to do provided that there is no cost or expense to the City, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty (30) days after a right of way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

Section 11. Privilege Tax.

(A) Privilege Tax.

(1) Except as set forth in Section 11(B) ~~and (C)~~ and (G), every utility operator shall pay the privilege tax calculated as a percentage of gross revenues earned from the provision of utility service to customers within the City at the following rates for each service provided during the term of the license:

Electric	5%
Natural Gas	5%
Telecommunications Utility (as defined in ORS 759.005)	7%
Other Telecommunications Services Providers	5%
Cable	5%
Water	5%
Sanitary Sewer	5%
Storm Sewer	5%

(2) Unless otherwise agreed to in writing by the City, the privilege tax shall be paid quarterly, in arrears, for each quarter during the term of the license, within thirty (30) days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable.

(3) For purposes of this Section 11(A), "gross revenues" means any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitations in federal or state law, any gross receipts or services that are excluded under a franchise agreement that is effective as of the enactment date of this Chapter, revenues for which the privilege tax is due from another Utility Provider under this Chapter, revenues from interstate commerce and the business of the United States Government,

NOTE: Change is requested to reflect the intent of the ordinance maintaining the status quo/revenue neutrality. Without the requested changes the city would be imposing new additional taxes on its citizens for which the populace should have the authority to vote whether such taxes should be imposed. The exemption for interstate service was included as ORS 221. 450 provides: However, the gross revenues earned in interstate commerce or on the business of the United States Government shall be exempt from the provisions of this section. The exemption for revenues that are exempt under a franchise agreement is to ensure that such revenues are not subject to the privilege tax which is/will be in lieu of applicable franchise fees and which would impair existing franchise agreements and is an alternative to adding subparagraph (G) under this section.

(B) Transmission Line Fee. A utility operator that does not earn gross revenues from the provision of utility service to customers within the City shall pay the transmission line fee set by Council resolution or set forth in the license granted by the City. The fee may be a flat fee per lineal foot of utility facilities in the City or such other fee determined by the Council after consideration of the utility operator's use or proposed use of the right of way. Unless otherwise agreed to in writing by the City, the fee shall be paid annually, in arrears, for each year during the term of this license within thirty (30) days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable.

(C) Attachment Fee. A utility operator whose only facilities in the right of way are facilities mounted on structures within the right of way, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the right of way, shall pay the attachment fee set by Council resolution or set forth in the license granted by the City. The fee may be a flat fee per structure or such other fee determined by the Council after consideration of the utility operator's use or proposed use of the right of way. Unless otherwise agreed to in writing by the City, the fee shall be paid annually, in arrears, for each year during the term of this license within thirty (30) days after the end of each calendar year, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable.

NOTE: This language is extremely vague and still allows the city council to impose a privilege tax based on gross receipts tax on wireless by resolution. In addition, it is extremely narrow in that whenever an antennae is attached to a pole it would generally require wires to connect it to the access

point. Also, to the extent that the city would require a wireless provider to place facilities in the right of way the city could force imposition of the privilege tax on a wireless provider.

(D) Payments required by this Section shall be reduced by any franchise fee payments received by the City, but in no case will be less than \$0.

(E) The utility operator shall pay interest at the rate of nine percent (9%) per year for any payment due pursuant to this Section made after the due date.

(F) The privilege tax required by this Section shall be subject to all applicable limitations imposed by federal or state law. The City reserves the right to enact any and all other taxes applicable to the utilities subject to the Chapter.

(G) The privilege tax will not apply where a CATV franchise agreement contains an alternative franchise fee for the use of the right-of-way or the provisioning of CATV services in the City.

Change requested to ensure that the privilege tax does not require the payment of fees on gross receipts/revenues that are excluded from franchise fees in a CATV franchise agreement.

Section 12. Audits.

(A) Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City, the provider of utility service shall:

(1) Furnish the City with information sufficient to demonstrate that the utility operator is in compliance with all the requirements of this Chapter and its franchise agreement, if any, including but not limited to the privilege tax payments required by Section 12 and the franchise fee required in any franchise.

(2) Make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities within the public rights of way or public utility easements. Access shall be provided within the Portland, Oregon metropolitan area unless prior arrangement for access elsewhere has been made with the City.

~~(B) If the City's audit of the books, records and other documents or information of the utility operator demonstrate that the utility operator has underpaid the privilege tax or franchise fee by five percent (5%) or more in any one year, the utility operator shall reimburse the City for the cost of the audit, in addition to any interest owed pursuant to Section 11(E) or as specified in a franchise.~~

NOTE: Deletion requested as such requirement usurps 221.515, and is unreasonable.

Optional language: If an audit results in a significant shortfall to the city and the agreed to findings are not corrected prior to commencement of a later audit utility shall be responsible for the actual cost incurred by the city to conduct the later audit. Utility shall not be liable for any audit costs for which the audit costs are based on a percentage of findings.

(B) Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) days of the City's notice to the utility service provider of such underpayment.

(C) City shall notify a utility of an audit within 3 years after the receipt of payment.

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NOTE: Change is requested to add a statute of limitations.

Section 13. Insurance and Indemnification.

(A) Insurance.

(1) All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:

(a) Comprehensive general liability insurance with limits not less than:

- (i) Two million dollars (\$2,000,000) for bodily injury or death to each person;
- (ii) Two million dollars (\$2,000,000) for property damage resulting from any one accident; and
- (iii) Two million dollars (\$2,000,000) for all other types of liability.

(b) Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000) for each person and two million dollars (\$2,000,000) for each accident.

(c) Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000).

(d) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than two million dollars (\$2,000,000).

(2) The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name or cover, or the Certificate of Insurance shall name or cover, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The Certificate of Insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy and provide the City with a replacement Certificate of Insurance as outlined in this Section. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

(3) The utility operator shall maintain on file with the City a Certificate of Insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.

(B) Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise granted or license issued pursuant to this Chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security, in a form acceptable to the City, as security for the full and complete performance of the franchise, if applicable, and compliance with the terms of this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by Section 6(C) of this Chapter for construction of facilities.

(C) Indemnification

~~(1) Each utility operator shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a franchise agreement.~~ Each Utility Operator shall indemnify and hold the municipality and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the Utility Operator, any agent, officer, director, representative, employee, affiliate, or subcontractor of the certificated telecommunications provider, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the municipality, its officers, employees, contractors, or subcontractors. If a Utility Operator and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the municipality and Utility Operator and does not create or grant any rights, contractual or otherwise, to any other person or entity. The acceptance of a license under Section 5 shall constitute such an agreement by the applicant whether the same is expressed or not. A Utility Operator or municipality shall promptly advise the other in writing of any known claim or demand against the Utility Operator or the municipality related to or arising out of the Utility Operator's activities in a public right-of-way.

~~Upon notification of any such claim the City shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.~~

~~NOTE: Change requested to exclude municipal negligence and to provide for joint negligence.~~

- (2) (2)—Every utility operator shall also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights of way or easements in a timely manner, as agreed to by the City and the utility, unless the utility operator's failure arises directly from the City's negligence or willful misconduct.

NOTE: Change requested to ensure that a utility has the necessary time to relocate its facilities and to ensure that a utility is not responsible for the actions and timing of another utility. Also see comment to Section 7C(3)

Section 14. Compliance.

Every utility operator shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the entire term of any license granted under this Chapter.

Section 15. Confidential/Proprietary Information.

If any utility operator is required by this Chapter to provide books, records, maps or information to the City that utility operator reasonably believes to be confidential or proprietary, the City shall take reasonable steps to protect the confidential or proprietary nature of the books, records or information, to the extent permitted by Oregon public records laws, provided that they are clearly designated as such by the utility operator at the time of disclosure to the City. The City shall not be required to incur any costs to protect such document, except as to the City's routine internal procedures for complying with Oregon public records law.

Section 16. Penalties.

- (A) Any violation of this Chapter shall be a Class 1 civil infraction.
- (B) Nothing in this Chapter shall be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this Chapter.
- (C) Each day's violation of a provision of this chapter constitutes a separate Class 1 civil infraction.

Section 17. Severability and Preemption.

- (A) The provisions of this Chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.
- (B) If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion

of this Chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this Chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

Section 18. Application To Existing Agreements.

~~To the extent that this Chapter in not in conflict with and can be implemented consistent with existing franchise agreements, this Chapter shall apply~~ applicable to all existing franchise agreements granted to utility operators by the City until expiration of such franchise unless such franchisee acknowledges incorporation of changes to existing laws in the term of the franchise. -

NOTE: Change requested to ensure existing franchise agreements are not impaired.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: January 15, 2008.

ADOPTED by the City Council of the City of Newberg, Oregon, this 15th day of December, 2008, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Norma I. Alley, City Recorder

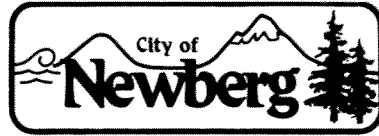
ATTEST by the Mayor this 15th day of December, 2008.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through City Council Committee at 08/18/2008 and 10/06/2008 meeting.
(committee name) (date)

Exhibit "B"
To Ordinance No. 2008-2703
(total of 2 pages)



[DEPT NAME]
City of Newberg
[ADDRESS]
[PHONE]
[FAX]
[INTERNET]

UTILITY RIGHT OF WAY LICENSE APPLICATION

Pursuant to Chapter _____ of the City Code of Ordinances, unless a person has a valid franchise from the City, every person who owns or controls any utility facilities (as defined in the Code) in, upon, beneath, over or across any public right of way (ROW), and prior to constructing, placing or locating any utility facilities in the ROW, shall obtain a license from the City.

Instructions: Please provide all information requested below, including applicable application fees, to _____ [INSERT APPLICABLE DEPARTMENT]. The application must be signed by an authorized representative of the entity requesting a license.

The City will review the information and return an executed copy of the application, if approved. The copy of the license application executed by the City will serve as the license required by Chapter _____.

For additional information, please contact _____.

Applicant Information:

1. Applicant Name (Include Corporate Name Registered with Oregon Secretary of State as well as any DBAs and Affiliates that will construct, own or control any facilities in the ROW):

2. Applicant's Authorized Contact Name(s), Title, Postal and E-Mail Address, and Phone and Facsimile Numbers: _____

3. Please describe the facilities to be constructed or operated. Include the following information: (a) the general location of the existing and/or proposed facilities; (b) a description of the approximate number of feet of plant existing and/or to be installed in the ROW; (c) whether the facilities are or will be aerial or underground; and (d) the size of facilities and equipment that are or will be located in, on, under, over, or above the ROW.

4. Check all of the following that apply regarding the services to be provided over the facilities in the ROW (see definitions in Chapter ____):
- Cable Service
 - Telecommunications Services
 - Natural gas
 - Electricity
 - Water
 - Sanitary Sewer
 - Storm Sewer
 - Other: _____
5. Please attach documentation or a statement that demonstrates that the applicant has received or is legally qualified to receive authorizations from state and/or federal authorities necessary to conduct the activities that will require use of the ROW.
- Check box if no authorizations required

By executing this License, the undersigned affirms that he/she is an authorized representative of _____ (“Licensee”) with the authority to execute this License Application. ~~I hereby certify, on behalf of Licensee, that the information provided in the license application is true and correct as of the date hereof, and that Licensee agrees to abide by the obligations set forth in Chapter ____ of the Code of Ordinances.~~

Change is requested to ensure that an entity retains its rights to challenge requirements of the ordinance if and when applied by the city. Without the change the city is effectively requiring utilities to agree to a unilaterally determined franchise agreement

By: _____
Print Name: _____
Title: _____
Date: _____

The City hereby grants to Licensee the License required pursuant to Chapter ____ of the Code of Ordinances.

By: _____
Print Name: _____
Title: _____

Date: _____

City of Newberg: ORDINANCE NO. 2008-2703

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Jeffrey G. Condit
jeff.condit@millernash.com
(503) 205-2305 direct line

December 1, 2008

VIA MAIL AND E-MAIL

The Honorable Bob Andrews, Mayor
Newberg City Council
Attn: Dawn Wilson
City Attorneys Office
City of Newberg
414 East First Street
P.O. Box 970
Newberg, Oregon 97132

Subject: Northwest Natural Gas Company's Testimony Regarding Ordinance
2008-2703, Scheduled for Hearing on December 1, 2008

Dear Mayor Andrews and City Councilors:

We represent Northwest Natural Gas Company ("NW Natural"). Please accept this letter into the record as NW Natural's testimony regarding the above-noted ordinance.

Ordinance 2008-2703 (the "Ordinance") appears to represent a significant policy and substantive shift by the City away from grants of individual franchises to a uniform license/privilege tax regime. Although the proposed ordinance exempts franchisees from compliance with the Ordinance (Section 5.A.1) and authorizes the grant of new franchises that could vary from or supersede compliance with the terms of the Ordinance (Section 5(E)), it appears that the intent is to move all current franchisees to the license regime as existing franchises expire. NW Natural respectfully disagrees with this approach. Different utilities are subject to different regulatory schemes and operate on different business models that justify individualized treatment in certain areas, particularly as between telecommunications and cable providers and energy utilities such as NW Natural.

The Telecommunications Act of 1996 encourages competition among telecommunications and cable providers, and mandates that City franchising/right-of-way regulations applicable to telecommunications providers maintain competitive neutrality to encourage fewer barriers to entry into the market. New



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telecommunications carriers could conceivably come into the City on a daily basis. It is therefore completely understandable why the City would want a regulatory scheme that would capture those providers and ensure regulation in a competitively neutral manner.

In contrast, NW Natural's service territory is allocated and its rates are regulated by the Oregon Public Utility Commission ("OPUC"). See ORS Chapter 757, ORS 758.400 to 758.475. There is no way for a natural gas provider to start providing services without the City's knowledge. There are no issues of competitive neutrality because there is no competition, and so the City is more free to customize a franchise in a way that recognizes the unique type of utility service that NW Natural provides. NW Natural believes that a separate franchise agreement is the preferable way to address these differences. An omnibus utility ordinance that appears geared primarily toward concerns with telecommunications utilities imposes an unnecessary regulatory burden on an energy utility like NW Natural.

The prime example is the licensing requirement in Section 5. This section requires all utility operators to obtain a license and to renew it every five years. The utility must submit substantial information to demonstrate that it has the ability to provide service and comply with the ordinance, and the City must undertake a review of the information and approve the license. This level of review and oversight is unnecessary for a natural gas utility. In order to obtain an allocation of service territory, to transfer facilities to another entity, or to contract with an existing provider to provide service, a natural gas utility must obtain approval from the OPUC pursuant to a public process and must demonstrate the same capabilities as required by the City ordinance. See ORS 758.410, 758.435, and 758.450. To require a separate licensing process for a natural gas utility and then require it to be repeated every five years is a burden on both the City's and NW Natural's staff time and resources. A standard franchise transfer provision is a better and less burdensome way to protect the City's interests with regard to a natural gas utility.

Unlike telecommunication services, which have substantially changed in recent years, the methods for transmission and distribution of natural gas haven't changed significantly in the 150 years since NW Natural first began providing services. A longer-term franchise provides certainty to NW Natural's investors and comfort to its lenders, which in turn enables NW Natural to provide better and more cost-effective service to its customers.



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Other Comments:

Section 7(C), (E) (Relocation): This section should provide that when the City relocates facilities, the City employ qualified personnel consistent with (for natural gas utilities) federal pipeline safety regulations. See 49 CFR 192.801 to 192.809. (In addition to certification under these standards, NW Natural requires its contractors to complete an in-house certification program.) The regulations apply to all workers on gas pipelines in NW Natural's service territory.

Section 7(D)(1) (Removal of Abandoned or Unauthorized Facilities): The 30-day requirement should be changed to "within a reasonable time given the nature of the utility facility." Removing an underground gas main is different from unstringing a telephone line. The City Manager has some discretion to vary from the schedule, but there is no requirement that this discretion be exercised reasonably.

Section 7(F) (Required "as built" Drawings): This section should contain an exception for proprietary information, e.g.,

"The level of detail in as-built drawings shall be limited to that which is needed for the City's administration of the Streets in order to protect the utility's confidential business information and the security of the utility's system."

NW Natural has security as well as proprietary concerns about making the location of certain facilities part of the public record. The proposed Ordinance allows utilities to mark certain information as proprietary, but that is difficult to do with maps.

Section 10 (Vacation): For the same reasons as stated above, the 30-day removal deadline should be changed to a "reasonable time." Also, NW Natural would request that the City agree to reserve a utility easement upon the request of the utility, and require that any workers be qualified under federal pipeline safety regulations and certified through NW Natural's in-house program.

Section 11 (Privilege Tax): We note that the City's authority with regard to imposition of a privilege tax on a natural gas utility is limited by ORS 221.450.

Section 11(A)(3), (4) (Definition of Gross Revenues): This definition is overbroad. For a natural gas utility, "gross revenues" should be limited to revenues from sale of gas, and should additionally exclude revenue from issuance of debt or



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securities, rental or lease of business property (as opposed to "Utility Facilities"), and revenues from finance charges or late payments.

It should also exclude revenues derived from public purposes charges approved by tariff where the revenues are passed on to a non-profit entity or are otherwise directly used for energy efficiency programs, low income efficiency and relief, carbon offset programs, market transformation programs, and similar programs that directly benefit ratepayers in NW Natural's service territory. (Electric energy utilities are also subject to public purpose charges imposed by statute or tariff.) These are for the most part pass-through revenues to entities such as Energy Trust of Oregon and Climate Trust of Oregon for the above-note purposes and not revenues to Northwest Natural derived from the sale of gas. It is against the public interest to force ratepayers to pay franchise fees on top of these public purpose charges. We suggest the following additional provision:

"Gross Revenues" also does not include revenue from Public Purpose Charges. For purposes of this subsection, "Public Purpose Charges" means a charge or surcharge to a utility customer required or authorized by federal or state statute, administrative rule, or by tariff approved by the OPUC, that raises revenue used for a public purpose and not to compensate the Utility for the sale of or use of a Utility service or for the use, rental, or lease of Utility Facilities in the City. Public Purpose activities include, but are not limited to, energy efficiency programs, market transformation programs, low-income energy efficiency programs, and carbon offset programs designed to benefit residential and commercial customers within a Utility's service area in Oregon. The parties acknowledge that during the term of a License specific Public Purpose Charges may be modified or repealed and additional Public Purchase Charges may be approved or required."

Section 12 (Audit): A 30-day notice period is sufficient for NW Natural to respond to a request for financial review, but it is not sufficient if the City wishes to conduct a full audit. In the latter circumstance, NW Natural would need 45 days to prepare. The Ordinance gives the City Manager some discretion to vary from the 30 day timeline, but we think a 45-day limit for audits would be more clear and avoid future conflict.

Pursuant to its tariff with the PUC, NW Natural only retains its billing records for 36 months. For this reason, we request that the audit or financial review be



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limited to the 36-month period preceding the notice of audit, and that any liability for underpayment (or overpayment – see below) be limited to the audit period.

Finally, in the interest of fairness, we request inclusion of a provision stating that if the audit or financial review shows that NW Natural has overpaid its privilege tax by more than 5% in any one year, it may deduct such amount, plus interest, from future privilege tax payments.

Section 13, Subsection C (Indemnification): NW Natural cannot insure for indemnity for liability arising from other than its “negligent acts or omissions.” Lines six and seven should be modified accordingly. In subsection 2, the City should include a mutual waiver of indirect or consequential damages.

These are a few of our comments regarding the provisions in the ordinance. Most of our concerns arise from NW Natural’s specific operations or business situation. These concerns would be substantially lessened if the Council intends to preserve a good faith opportunity to enter into a separate franchise agreement that can address NW Natural’s specific needs and operations in a way that can vary from the ordinance. If not, however, then the ordinance must be much more carefully drafted to reflect the differing situations of the various utilities that the City regulates.

We appreciate the opportunity to submit comments.

Very truly yours,

Jeffrey G. Condit

cc: Sandi Hart
Janis Pfannenstiel

TESTIMONY
Before the City Council of the City of Newberg
Regarding Ordinance No. 2008-2703
Wendy Buck
Portland General Electric Co.
December 1, 2008

Mayor Andrews and Councilors: My name is Wendy Buck. I represent Portland General Electric. We provide electricity to the homes and businesses of Newberg. PGE is headquartered at 121 SW Salmon St., Portland, Oregon 97204.

PGE and Newberg have much in common. All your citizens are our customers. Both organizations have an obligation to provide essential services at a reasonable cost. We both use the public right of way to deliver services. In PGE's case it is with your permission.

PGE and this city have a long history of working together cooperatively to resolve issues. That is how PGE has obtained your permission to use the public right of way in the past, by sitting down and negotiating a franchise agreement that is the right fit for the city, and addresses directly the issues that are particular to an electric utility. That agreement does not expire until July 2012.

Given that background, we hope and expect when the current franchise expires we will renegotiate a new franchise agreement and that will govern our operations in the right-of-way. If you decide that you will not be renewing a franchise we urge you to reconsider having this ordinance, as drafted, apply to PGE for the following reasons:

- PGE has not presented the types of problems this ordinance apparently seeks to address. If you are concerned about telecommunications utilities or any other type of utility, they can be addressed in a separate ordinance or franchise agreement – that's what the City of Hillsboro has done and the League of Oregon cities provides with its model telecommunication ordinance.
- The cities of Gresham and Tigard also have similar ordinances that are effective and simpler. The City of Hillsboro has adopted an ordinance that applies only to telecommunication providers. We also understand that the League of Oregon Cities model ordinance applies only to telecommunication providers. We believe electric utilities should not be covered by this proposed ordinance, if indeed you decide that the ordinance is needed. My second point is:
- A negotiated franchise has worked well for us and the City of Newberg. It is now 16-years-old, it has less than one third the number of pages contained in the ordinance, it is well understood by PGE, the city and their people in the field. Thirdly:
- While the concept of "utility neutral" would seem like an admirable goal, an electric utility is a very different type of operation than other utilities, making it very difficult to craft one-size-fits all law. This is one reason why the state and federal governments regulates each type of utility differently.
 - o An electric utility provides a necessary service that, among many other things, keeps homes warm and keeps them lighted at night and operates lifesaving medical equipment. Every new layer of regulation or liability adds to every customer's, every citizen's cost of living. Every potential delay in service can hurt someone. You cannot say that about internet service, natural gas, or even telephone.

- This ordinance is intended to enhance “competitive utility services.” PGE is a regulated monopoly. We aren’t allowed to engage in competition except very limited circumstances specified by state rules. We certainly don’t compete with the telecom companies. So, a provision that applies only to PGE wouldn’t give an advantage or disadvantage over them. Because of these factors, we’re not going in and out of business in Newberg. We’re always going to be here.
- Another thing that distinguishes electric utilities is safety. It’s a great product, but if it is not handled properly, can be a dangerous product.
- As mentioned earlier, the City of Hillsboro recognized these differences by passing an ordinance that only applies to telecommunication providers.

You might ask what if we apply this ordinance to PGE anyway? What harm will be done?

Though my time limit of five minutes does not permit me to go over every line that concerns us, we have listed, in written testimony many items, at the bottom of the text, ones that we find especially problematic, some involving possibly unintended consequences: Generally speaking, they would:

- Unnecessarily increase the burden, cost and complexity of regulatory demands, compared to the existing franchise, with your citizens ultimately bearing the cost.
- Present unclear or very broad language, increasing the potential for misunderstanding or unfair demands.

I hope you will discuss these concerns with us, then contrast the ordinance to your franchise agreement already in existence with PGE, or many of the other excellent franchise agreements used by PGE and cities in our service territory.

Summing up: We understand that good right-of-way management practices are important for keeping roads and facilities in good working order. PGE and Newberg have had a long term, good working relationship, and a good system for regulating what PGE does in the city's rights of way. We don’t see the need for this ordinance’s approach in dealing with your community’s electric utility. If you see issues with other utilities, they can be addressed separately without adding undue costs or burdens to electric customers.

We would welcome a separate franchise agreement, as provided in section 5 E., to address items that differentiate an electric utility or PGE in particular.

We hope you agree that on balance that PGE should have its own franchise agreement when the current one expires. Again, if you don’t agree on renewing a franchise we urge you to reconsider this ordinance, as drafted, apply to PGE. We ask for an opportunity to further discuss. We’ll both get a better final product. We’re eager to continue this conversation.

I thank you for the opportunity to speak this evening.

Major issues with language include, but are not limited to:

Section 4 Definitions

- “Right-of-Way” (not applying to parks)
- “Telecommunications Services” (services for utility’s internal use)

Section 6 Construction and Restoration

- C (1)(2). Performance Bond requirement
- F. Engineering Designs and Plan paragraph seems incomplete.

Section 8 Leased Capacity

- Record keeping requirements

Section 10 Vacation

- We need city notification of a proposed vacation to allow time to relocate or remove our facilities.

Section 11 Privilege Tax

- A (2) We ask that you allow for 45 days for the quarterly payment. This allows for a reasonable time period to accurately calculate the payment and doesn’t put an undo administrative burden and cost to calculating and delivering the payment. It is also consistent with other cities that receive quarterly payments.
- A (3) “Gross Revenues” PGE believes that the definition should parallel the one that is in our recent franchise agreement, as it has stood the test of time and is consistent with the definition used in other cities. Therefore, the exclusions should include the following:
“sales of electric energy to any public utility when the public utility purchasing such electric energy is not the ultimate consumer, and revenue from joint pole use. For purposes of this section, revenue from joint pole use includes any revenue collected by the franchisee from any other person franchised, permitted, licensed or otherwise granted authority by the City for the right to attach wires, cable or other facilities or equipment to, or place them in, franchisee’s Equipment or Facilities.”

Section 13 Insurance and indemnification

- C (1)(2). Indemnification and related timelines. In particular subsection 2 is too broadly written.

We hope you’ll agree that these texts require more time for discussion and resolution.

Respectfully submitted,

- Wendy Buck

Proposed Ordinance 2008-2708:

*Lift Freeze on Bypass
Zone and Comprehensive Plan
Changes in Interchange Overlay
Zones*

Staff presentation to the
Newberg City Council
December 1, 2008

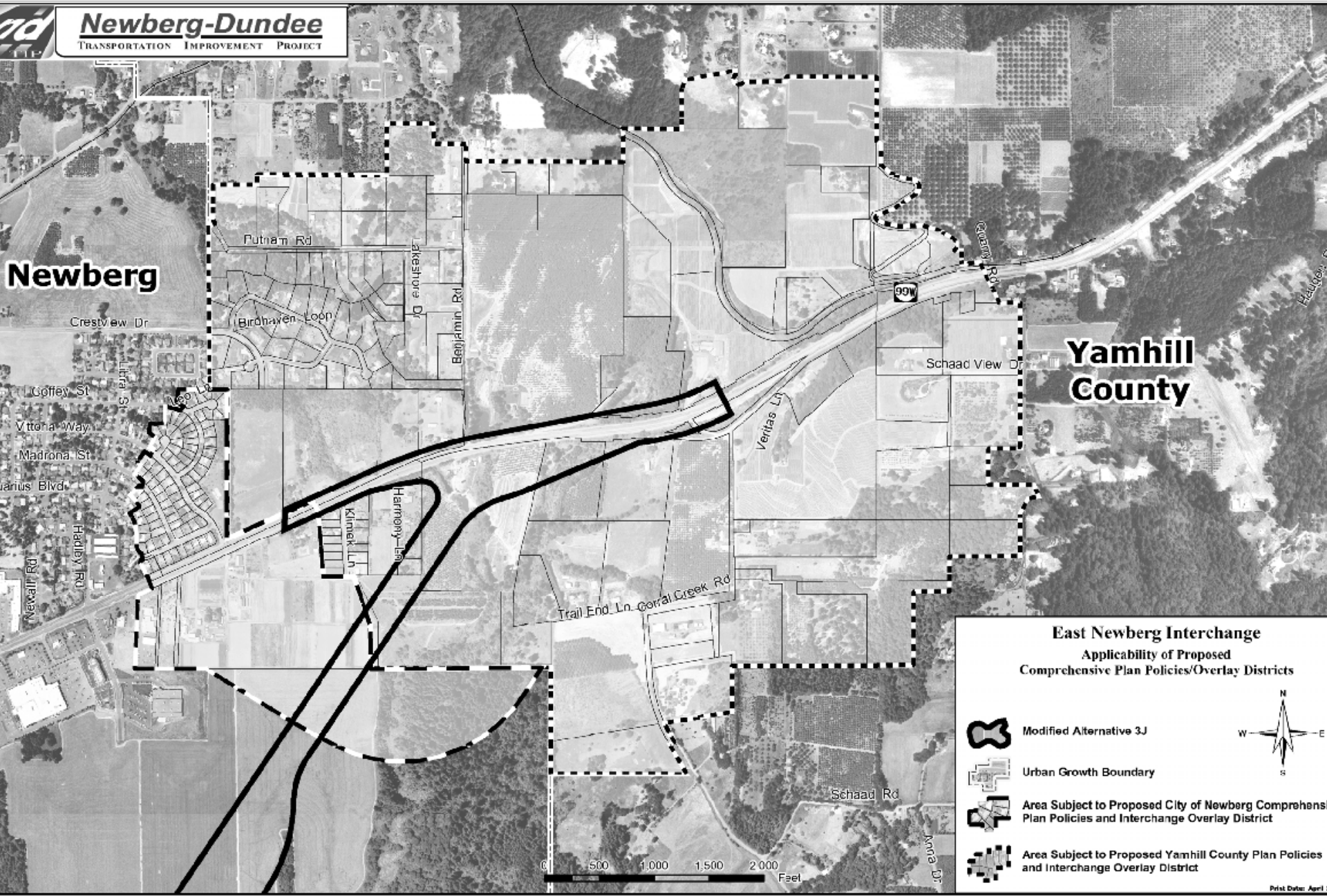
Proposed Ordinance 2008-2708:

An Ordinance Revising the Newberg Comprehensive Plan and Development Code to Remove a Temporary Freeze on Zone Changes, Comprehensive Plan Designation Changes, and Amendments to the Urban Growth Boundary and Urban Reserve Area for Land In the Bypass Interchange Overlay Districts







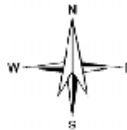
Newberg

Yamhill County

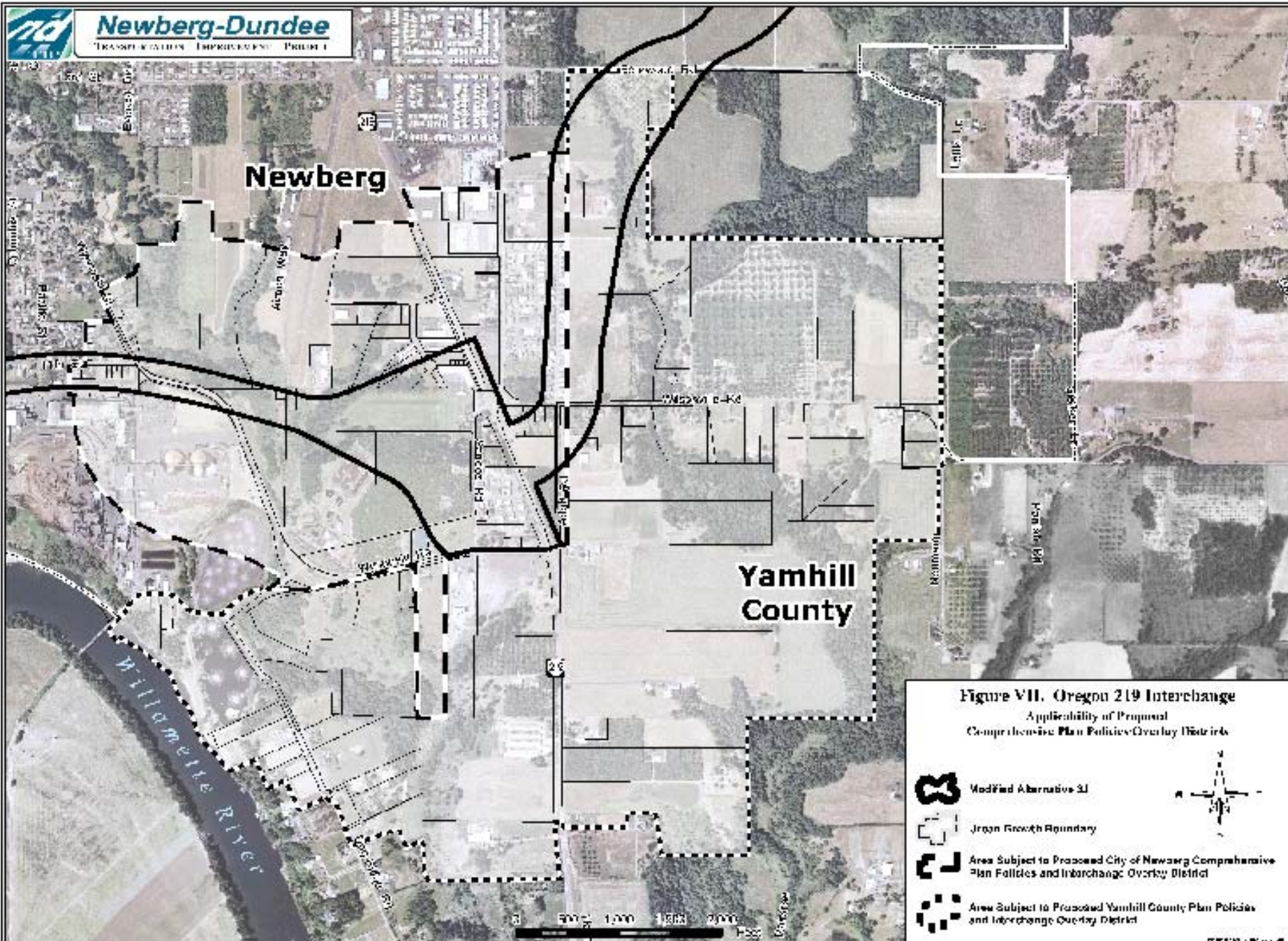


East Newberg Interchange
Applicability of Proposed
Comprehensive Plan Policies/Overlay Districts

-  Modified Alternative 3J
-  Urban Growth Boundary
-  Area Subject to Proposed City of Newberg Comprehensive Plan Policies and Interchange Overlay District
-  Area Subject to Proposed Yamhill County Plan Policies and Interchange Overlay District



0 500 1,000 1,500 2,000 Feet



Background

Ordinance 2004-2602 adopted 9/20/04

- Added/modified comprehensive plan policies to support the bypass and protect the corridor and interchange management areas
- Added Bypass Interchange (BI) Overlay District (§ 151.123 & (§ 151.531) to development code
- Prohibited certain commercial uses allowed in industrial areas
- Prohibited zone changes, UGB amendments, Urban Reserve amendments in BI Overlay District prior to adoption of Interchange Area Management Plans (IAMPs)
- Intended as an interim land use tool until IAMPs adopted

Why Ordinance 2007-2708 is Needed

- Anticipated IAMPs complete in 3 years (9/07)
- IAMPs not completed, delayed several times, latest estimate is early 2010
- Freeze applies to UGB and URA amendments, comprehensive plan amendments, and zone changes within BI Overlay Districts
- Interim freeze is delaying several important planning projects (URA planning, UGB expansion, UGB plan amendments to provide needed land for industry and housing)

Major Effects of Ord. 2008-2708

- End the City of Newberg's temporary freeze on changes to the Urban Reserve, Urban Growth Boundary, Comprehensive plan designations, and zoning within the Interchange Overlay Districts established by Yamhill County and the City of Newberg
- Continue Newberg's other land use restrictions within the Interchange Overlay Districts

Other Actions Needed

- Have asked County planners to consider removing similar restrictions in County's plan and code
- Will need to work with ODOT to revise references to timing, interim restrictions in our intergovernmental agreement; County would need to do the same

Recommendation

Adopt Ordinance No. 2008-2708:

An Ordinance Revising the Newberg Comprehensive Plan and Development Code to Remove a Temporary Freeze on Zone Changes, Comprehensive Plan Designation Changes, and Amendments to the Urban Growth Boundary and Urban Reserve Area for Land In the Bypass Interchange Overlay Districts

City of Newberg

Financial Statement Presentation

for

July 1, 2007

through

June 30, 2008

Staff Report on December 1, 2008, for

Resolution No. 2008-2818

Outline:

❖ The Auditors Report:

What do they do?

- Auditor's Role
- Results

❖ Fiscal Year 2007-08

The Story

- Revenues & Funds
- Capital Projects
- Capital Assets
- Debt
- Next Year
- CAFR GEM's

The Auditors Report:

■ The Auditor's role:

- To obtain reasonable assurance about whether the financial statements are free of material misstatement
- Examining and testing evidence supporting the amounts and disclosures in the statements
- Assessing the accounting principles used and significant estimates made by management – are they reasonable?
- Evaluate the overall financial statement presentation

The Auditors Report: cont'd

- City of Newberg Audit Results:
 - Financial statements present fairly the financial position
 - No findings – all in good order, tested internal control over financial reporting and policy practice
 - No management comments

The Fiscal Year 2007-08 Story

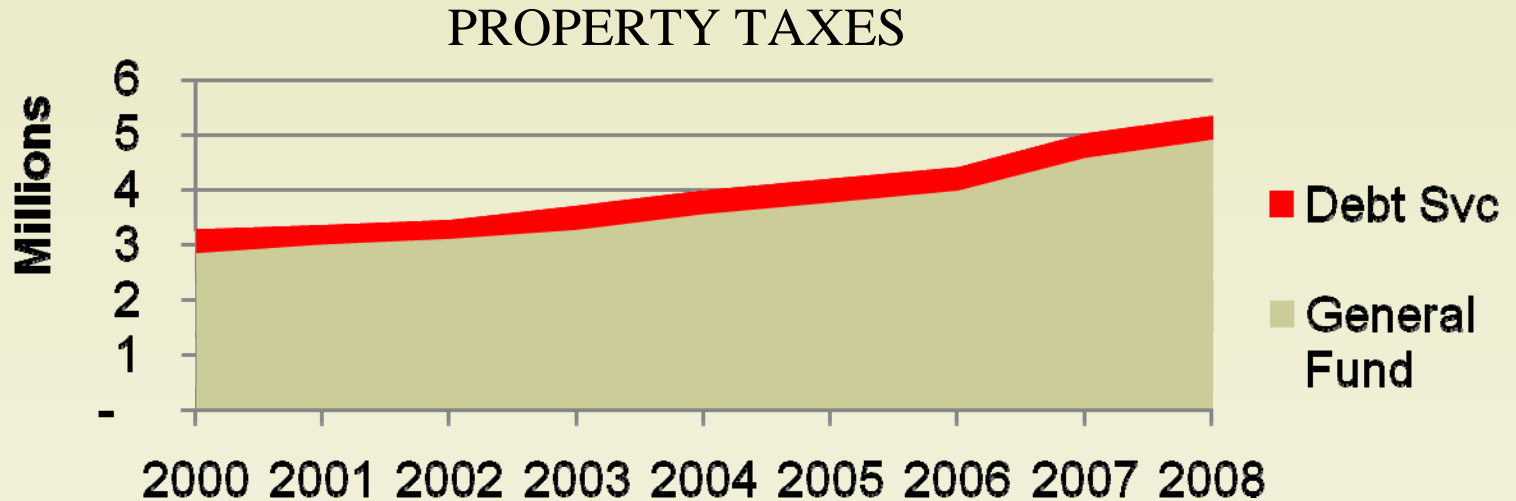
General Fund Balances



- Revenues

- General Fund ending balance up \$1 million

The Fiscal Year 2007-08 Story



- Property Tax Revenues increased \$300,000 from prior year actuals
 - Commercial property development added \$30 million in value (higher than past two fiscal years)
- Franchise Fees, Hotel/Motel & misc up \$200K
 - NW Natural and PGE higher

Fiscal Year 2007-08



- Fines and forfeitures increased \$300,000 –
 - photo red light
 - aggressive effort by the Court Dept to collect on delinquent accounts
- License and permits increased \$400,000, 82%

- *General Fund Expenditures grew 5.6% over prior fiscal year*

■ Building Inspection Fund

- Continued to struggle during the year, failed to recoup its costs. A down turn in the housing market adversely affected the revenues
 - New housing in the Springbrook property area has been put on hold until the housing market picks up again

Fiscal Year 2007-08

■ Utilities

■ Water

■ Utility

- Charges for service revenue decreased nearly \$100,000
- Operating expenses up 10%
- Depreciation \$728,000

- SDC's Revenues increased from commercial construction projects

■ Wastewater Utility

- Net assets increased by \$1 million
- Charges for service increased 5%
- Operating expenses decreased by 6%
- Depreciation \$1 million
- Operating income was negative \$224,293. Reflecting a multi-year trend of insufficient operating revenues

Fiscal Year 2007-08

- Storm Utility
 - Net assets increased \$400,000 due to infrastructure contributions by developers
 - An operating loss of \$167,216
 - Depreciation \$275,000

- Utility rates increase for 08-09
 - water 6.5%
 - wastewater 20%
 - storm 7.5%

Fiscal Year 2007-08

■ Capital Projects

■ Completed:

- Arterial S Curve 4 ½ year project
- Alice Way LID
- Paving Meridian and 9th streets



■ Started:

- Effluent Reuse
- Villa Road
- Main Street LID engineering
- Dayton Ave Pump Station engineering



Fiscal Year 2007-08

■ Capital Assets

- 9 new vehicles for various departments (5 PD, 4 PW)
- New capital lease for telecommunications \$337,821
- IT server room remodel \$82,000
- Mountainview Road S-Curve
 - Street 3,419,764
 - Water 1,027,555
 - Wastewater 606,926
 - Total \$ 5,054,245

- Construction in progress:
 - Effluent reuse project \$7million



Fiscal Year 2007-08

Capital Assets Cont'd

- Infrastructure contributed by developers

- Street, right of way and lighting

\$2.5 million

- Water lines \$300,000

- Wastewater \$300,000

- Storm lines \$400,000

-

- Projects:*

- Willamette Meadows*

- Oak Meadows*

- Terrace Heights*

- Highlands @ Hess Creek*

- McKern's Corner*



Fiscal Year 2007-08

- Debt \$29.6 million as of June 30th
 - \$8.1 million outstanding General Obligation Debt
 - \$3.2 million paid by property taxes
 - \$4.9 million paid by City Hall fee and internal charges to departments
 - \$15.7 million Related to Utility Division
 - \$6.5 million for Well #8 / Water Treatment Plant Expansion
 - \$2.6 million for water pipeline to water treatment plant
 - \$3.8 million for water reservoir and transmission line
 - \$2.2 million for composter odor control mechanism and College Street Waste Water system
 - \$0.6 million for Fernwood Road utility improvements

Fiscal Year 2007-08

New debt:

\$5.8 million to-date for the Effluent Reuse and Generator Projects



The Next Fiscal Year

- Debt
 - Wastewater Treatment Plant needs of \$55 million
- Community Development / Bldg Inspection
 - Maintain current staffing levels with economy?
- Economic affects on the City....
 - Property Taxes
 - Utility Bill payments
 - Building Inspection Fund
 - SDC's for future capital projects
 - Hotel/Motel Tax

CAFR GEM's:

Comprehensive Annual Financial Report

- Notes to the Basic Financial Statements
 - Page 25 - 50
- Schedules of Revenue and Expenditures
 - Page 51 - 93
- Capital Assets Used in Operations
 - Page 108 -110
- Market & Assessed Value of Taxable Property
 - Page 128
- City of Newberg Principal Taxpayers
 - Page 130
- Operating Indicators
 - Page 139
- Capital Asset Statistics
 - Page 140

2007-2008 Audit Report Review

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Thank you.