



**CITY COUNCIL MEETING AGENDA**  
**Tuesday, October 21, 2014 - 6:00 P.M.**  
**Council Chambers**

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The meeting of the Newport City Council will be held on Tuesday, October 21, 2014, at 6:00 P.M. The meetings will be held in the Council Chambers of the Newport City Hall, located at 169 S.W. Coast Highway, Newport, Oregon 97365. A copy of the agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613.

The City Council reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the meeting.

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**CITY COUNCIL**  
**Tuesday, October 21, 2014 - 6:00 P.M.**  
**Council Chambers**

*Anyone wishing to speak at a Public Hearing or on an agenda item should complete a Public Comment Form and give it to the City Recorder. Public Comment Forms are located at the entrance to the City Council Chambers. Anyone commenting on a subject not on the agenda will be called upon during the Public Comment section of the agenda. Comments pertaining to specific agenda items will be taken at the time the matter is discussed by the City Council.*

- I. Pledge of Allegiance
- II. Call to Order and Roll Call
- III. Public Comment  
*This is an opportunity for members of the audience to bring to the Council's attention any item not listed on the agenda. Comments will be limited to three (3) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.*
- IV. Proclamations
  - A. October - Domestic Violence Awareness Month (CeCe Pratt)
- V. Consent Calendar

*The consent calendar consists of items of a repeating or routine nature considered under a single action. Any Councilor may have an item on the consent agenda removed and considered separately on request.*

- A. Approval of Minutes of the City Council Town Hall Meeting of September 29, 2014, Regular Meeting, Work Session, and Executive Session of October 6, 2014 (Hawker)
- B. Mayoral Committee Appointments
  - 1. Confirm the Mayor's Appointment of Paul Stangeland to the Parks and Recreation Advisory Committee for a Term Expiring 12/31/15

## **VI. Public Hearing**

*This is an opportunity for members of the audience to provide testimony/comments on the specific issue being considered by the City Council. Comments will be limited to three (3) minutes per person*

- A. Public Hearing and Possible Adoption of Ordinance No. 2071 Creating a Local Tax on Recreational Marijuana and Marijuana-Infused Products, and on Resolution No. 3694 Setting a Tax Rate on Recreational Marijuana and Marijuana-Infused Products

## **VII. Communications**

*Any agenda items requested by Mayor, City Council Members, City Attorney, or any presentations by boards or commissions, other government agencies, and general public will be placed on this part of the agenda.*

- A. From Business License Work Group - Report on Update to Business License and Taxicab License Ordinances

## **VIII. City Manager Report**

*All matters requiring approval of the City Council originating from the City Manager and departments will be included in this section. This section will also include any status reports for the City Council's information.*

- A. Authorization to Initiate Proceedings to Withdraw Territory from Seal Rock Water District
- B. Report and Discussion on Electronic Messaging Sign for City Center
- C. Discussion on the Announced Closure of the United States Coast Guard Air Facility
- D. Discussion and Possible Appointment of a Council Liaison to the City Emergency Planning Committee

## **IX. Report from Mayor and Council**

*This section of the agenda is where the Mayor and Council can report any activities or discuss issues of concern.*

## **X. Public Comment**

*This is an additional opportunity for members of the audience to provide public comment. Comments will be limited to five (5) minutes per person with a maximum of 15 minutes for all items. Speakers may not yield their time to others.*

## **XI. Adjournment**



## PROCLAMATION

### OCTOBER 2014 - DOMESTIC VIOLENCE AWARENESS MONTH IN THE CITY OF NEWPORT, OREGON

**WHEREAS**, the crime of domestic violence violates an individual's privacy and dignity, security and humanity, due to systematic use of physical, emotional, sexual, psychological, and economic control and/or abuse; and

**WHEREAS**, domestic and sexual violence crosses all levels of the socio-economic strata, race and ethnicities, ages, gender identities, sexual orientation, physical and mental abilities; and

**WHEREAS**, the impact of domestic violence is wide ranging, directly affecting individuals and society as a whole, here in this community, throughout the United States, and the world; and

**WHEREAS**, a coalition of organizations has emerged to directly confront this crisis. Advocates and those involved with shelters and hotline services, law enforcement officials, health care providers, the clergy, and other concerned individuals are helping in the efforts to end domestic violence.

**NOW, THEREFORE**, in recognition of the important work done by My Sisters' Place, Siletz Tribal Violence Against Women Act Program, Lincoln County District Attorney, and the Lincoln County Domestic Violence Council, I, Sandra N. Roumagoux, Mayor of the City of Newport, Oregon, do hereby proclaim the month of October 2014, as **Domestic Violence Awareness Month** in Newport, and I urge all citizens to work with these invaluable community agencies to help alleviate this problem in our community.

Dated: October 21, 2014

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Sandra N. Roumagoux, Mayor

September 29, 2014  
5:00 P.M.  
Newport, Oregon

The City of Newport held an open house and tour of the Northside Fire Station, 225 NW 73<sup>rd</sup> Street at 5:00 P.M.

The Northside Fire Station was formally dedicated at 5:30 P.M.

The City Council of the City of Newport met on the above date in a Town Hall meeting, at 6:00 P.M., at the Northside Fire Station. Present were Roumagoux, Beemer, Allen, Sawyer, Swanson, and Saelens. Busby was excused.

Staff present was City Manager Nebel, City Recorder Hawker, Community Development Director Tokos, Public Works Director Gross, Interim Fire Chief Murphy, Police Lieutenant Malloy, and many Fire Department personnel.

### **WELCOME AND INTRODUCTIONS**

Mayor Roumagoux introduced Council and staff.

### **PLEDGE OF ALLEGIANCE**

Council and the audience participated in the Pledge of Allegiance.

### **OPENING REMARKS BY CITY MANAGER NEBEL**

Nebel reviewed the history of the Town Hall meetings. He noted that questions would be taken after each presentation, and questions not related to agenda items would be taken at the end of the meeting.

### **POTENTIAL NEW NORTHSIDE URBAN RENEWAL DISTRICT**

Tokos made a PowerPoint presentation. He explained the previous and current urban renewal districts and the reasons for having districts and uses of district monies. He reviewed potential new urban renewal district boundaries, and explained the draft schedule for creating a new urban renewal district.

### **UPDATE ON IMPROVEMENTS TO THE AGATE BEACH WAYSIDE AT HIGHWAY 101 BETWEEN WOODY WAY AND LIGHTHOUSE DRIVE**

Tokos reported that these improvements will include a recreational vehicle turnout; additional parking; improvements to the approach onto Highway 101; a restroom and shower; and a sidewalk and boardwalk to the beach. He reported that the funding for this project is primarily from a federal Scenic Byways Grant. He noted that the consultant will organize two concepts for an upcoming workshop to be held in December of 2014. He

noted that, as scheduled, the project will be bid in September of 2015 with construction occurring during the spring of 2016. Several audience members questioned when the boardwalk was included in the design, noting that no one proposed a boardwalk. Allen asked whether community engagement could be solicited prior to the workshop in December. Nebel noted that a meeting could be set for the design of these improvements.

### **GEOLOGICAL CONDITIONS IN AGATE BEACH - GEORGE PRIEST - DOGAMI**

George Priest made a PowerPoint presentation regarding geological issues in Agate Beach, and particularly on the Schooner Creek landslide which is located north of the headland. He reviewed the affected properties; the geometry of the slide; a cross section through the landslide; causes of slope failure; and mitigation options. He responded to questions from the Council and the audience.

### **PLANNED INFRASTRUCTURE IMPROVEMENTS IN THE AGATE BEACH NEIGHBORHOOD**

Gross reported that the city performs an annual overlay project. He reviewed projects that the city plans to perform including: Avery and 73<sup>rd</sup> Streets overlay; Avery and 71<sup>st</sup> Streets overlay; Ksenyia Ridge sidewalks; NE 71<sup>st</sup> Street water tank; Schooner Creek forcemain; NW 58<sup>th</sup> Street overlay; Agate Beach Wayside improvements; and the paving of 57<sup>th</sup> Street. He responded to questions from the audience.

### **PRIVATE DEVELOPMENT PROJECTS IN THE AGATE BEACH NEIGHBORHOOD**

Don Huster reported that he is planning a 120-unit assisted living facility with access from Highway 101 on 60<sup>th</sup> Street. He noted that subsequent phases will include 101 single family units. He added that the project is in the conceptual stage and no plans have been submitted for construction. He stated that he hopes to begin construction in 2015.

Guy DiTorrice, representing Oceanveiw Senior Living, reported that the facility is planning a 48-bed expansion for a secured senior living facility. He added that the facility's biggest need is staffing.

### **PUBLIC COMMENT**

It was suggested that meter readers notify property owners if there is high water usage or there appears to be a leak. Gross report that the meter readers will notify the property owners, but that the city is actively pursuing the acquisition of an automatic meter reading system which should be on-line within the next five years.

LeOra Johnson reported that a project of the CERT is to map neighborhoods including the numbers of residents, children, and pets, so that this information is available in the event of an emergency.

Allen asked how residents will be notified when the City Council looks at creating a new urban renewal district. Tokos reported that there will be hearings before the Planning Commission and City Council, and a direct mail notice to affected areas.

LeOra Johnson thanked the city for mailing the agenda for this meeting to residents of the Agate Beach neighborhood.

MOTION was made by Allen, seconded by Sawyer, to adjourn the meeting. The meeting adjourned at 7:25 P.M.

October 6, 2014  
6:00 P.M.  
Newport, Oregon

The City Council of the City of Newport met on the above date in the Council Chambers of the Newport City Hall. On roll call, Allen, Beemer, Swanson, Roumagoux, and Saelens. Busby and Sawyer were excused.

Staff present was City Manager Nebel, City Recorder Hawker, Interim Fire Chief Murphy, Parks and Recreation Director Protiva, and Police Lieutenant Malloy.

### **PLEDGE OF ALLEGIANCE**

Council, staff, and the audience participated in the Pledge of Allegiance.

### **PUBLIC COMMENT**

Bill Bain recognized John Rehfuss, a former City Councilor and Planning Commissioner, on his passing on October 1, 2014.

Rex Capri requested the city consider resurfacing NE 3<sup>rd</sup> Street and Yaquina Heights Drive, and installing a continuous sidewalk on Nye Street from Olive Street to 15<sup>th</sup> Street.

### **PROCLAMATIONS, PRESENTATIONS, AND SPECIAL RECOGNITIONS**

**Proclamation - Fire Prevention Week.** Roumagoux proclaimed the week of October 5 - 11, 2014 as Fire Prevention Week in the City of Newport. Murphy accepted the proclamation.

### **ADDITION TO THE AGENDA**

MOTION was made by Allen, seconded by Saelens, to add Resolution No. 3692, regarding the U.S. Coast Guard Air Facility, as agenda item VII D. The motion carried unanimously in a voice vote.

### **CONSENT CALENDAR**

The consent calendar consisted of the following items:

- A. Approval of City Council minutes from the meeting of September 15, 2014, and the special meeting and executive session of September 29, 2014.
- B. Approval of Traffic Order No. 14-8 establishing an all-way stop at NE Harney and NE 7<sup>th</sup> Streets.

MOTION was made by Beemer, seconded by Allen, to approve the consent calendar with the changes to the minutes as noted by Allen. Allen asked when the traffic order would be put in place. Nebel explained the implementation process. The motion carried unanimously in a voice vote.

## PUBLIC HEARING

### **Public Hearing and Authorization to Construct a Bicycle Pump Track at Coast Park.**

Hawker introduced the agenda item. Nebel reported that the Park and Recreation Department has been approached by the Yaquina Wheels Bicycle Club about the construction of a dirt pump track in the city. He added that there were several sites evaluated for this facility with the lead site being the undeveloped portion of Coast Park west of the current park. He stated that Coast Park was developed in 2010 with the use of land and water conservation funds. He noted that a bicycle pump track is a series of rolling hills with berms built in a loop that can be ridden continually without the need to pedal, as forward momentum is maintained by “pumping” the bike through the roller sections. He reported that pump tracks can be built in a small space providing a safe venue to progress from novice through expert levels. He stated that if the development of this site is authorized by the City Council, the staff will work with the Yaquina Wheels Bicycle Club to determine the best approach for access, parking, drainage, pathways, and the actual footprint of the track.

Nebel reported that Parks and Recreation Director Jim Protiva has indicated that the Park and Recreation Advisory Committee has reviewed the conceptual use of this property and has recommended that the project go forward. He added that adjacent property owners have been notified of the proposed use and hearing this evening. He noted that as of Wednesday, October 1, 2014, the city had received one letter opposed to the pump track which was included in the packet. It was noted that another letter, in opposition to the development, had been received by staff.

Protiva gave a brief update and introduced Chris Magels and Daniella Crowder.

Crowder reported that the idea for a bicycle pump track was borne from community members taking their children to ride on bicycle pump tracks in other areas. She added that a bicycle pump track is a community kind of place that would provide exercise for families and fit in with the existing park. She reviewed the other locations that were examined. She reported that Linda Yapp, from the Montessori School, had submitted an e-mail in support of the track. She provided the letter to the City Recorder. She reported that she has spoken with many different groups that support the proposed project. She added that she will find funding and volunteer labor to build the track, but would like an accessible piece of land. She stated that the Wilder development had agreed to donate dirt, and that Road and Driveway had agreed to haul the dirt. She added that people are excited about the project, and that she would like to talk with the people who are not enthused about the project.

Chris Magels distributed a handout and reported that a bicycle pump track is a series of small dirt mounds spaced so that you can ride without pedaling. He added that the footprint is a small space, and there will be lots of volunteers to provide expertise in building the facility.

Nebel recommended that Council hold a public hearing on the possible authorization of construction of a bicycle pump track at Coast Park by the Yaquina Wheels Bicycle Club.

Roumagoux opened the public hearing at 6:32 P.M. She asked for public comment. Peggy read the letters.

Bruce Watanabe spoke in support of the location of the pump track as proposed. He stated that he supports the project as a community member, parent, and noted that it would be a great addition to the community.

Wendy Engler stated that she is in favor of the project, but that it appears that additional information is needed. She suggested screening adjacent properties with native plants.

Eileen Obteshka stated that she thinks the project is a great idea but that it is incompatible with the proposed location.

Marletta Noe stated that she would have loved something like this while growing up, and expressed hope that the City Council can find a way to limit the noise problems to certain times.

Danielle Cutler spoke in favor of the bike pump track.

David Larsen expressed support of the proposal. He spoke to the possibility of the bike park being a benefit to vacation lodging owners; a benefit that has yet to be explored.

Roumagoux closed the public hearing at 6:51 P.M. for Council deliberation.

Allen requested clarification regarding the noise issue. He asked whether Crowder knew whether the use of these tracks at night would disturb the residents in the surrounding areas. Crowder reported that the track will not be lit, so there people would not be able to see the track in order to ride at night. She added that it is more of a day-time facility for families. She noted that volunteer families want to maintain the facility; keep it clean; and have a presence that should dissuade others from taking over the facility. She stated that the track is meant for a younger group of users.

Allen stated that The Whaler and the townhome owner provided good letters that raised valid issues. He added that while there is a lot of support for the project, before he is comfortable authorizing it, he prefers that Crowder's group meet with The Whale and the Nye Beach Townhome Association, Police Chief, City Manager, and perhaps the Public Works Director to answer questions and respond to issues. He recommended that the City Manager report to Council on how the issues raised in the letters have been addressed. He suggested more outreach and engagement. Crowder reported that Gross has visited the site and developed a drainage solution. It was suggested that a site visit with the appropriate people is the best way to assess the project and potential issues.

Beemer stated that Council's obligation is to listen to everyone. He added that he believes that the concerns that were raised this evening need to be addressed. He stated that he supports getting the stakeholders together to review and address the issues.

Roumagoux noted that this is how one learns to ride a bicycle as a child. She added that it is almost like a bike track in slow motion, and suggested that a video might be beneficial in describing the activity.

Swanson noted that the concept is new to her and added that she needs more information. She stated that number seven in the letter from the Nye Beach Townhome Association would need to be addressed.

Saelens noted that it is clear that Council is not going to make a decision on this proposal tonight. He added that he has been liaison to the Parks and Recreation Advisory Committee which has been working on this project. He stated that Newport needs to provide for its children. He added that he would not want to move the project forward tonight thinking that the track needs to be placed at a different location. He stated that he is satisfied that this is the appropriate location for this facility.

Nebel reported that the primary issue in having follow-up information at the next meeting is the vacation schedule of staff. He stated that if this item is not ready for the October 20 to make next meeting is vacation of staff. May be possible, if can't happen, could do November 3 as outside date. Will try to get something done by that date.

MOTION was made by Allen, seconded by Beemer, that the City Manager, staff, and stakeholders meet at the site, review the issues, and report back to Council on November 3, so that Council can consider the report and possibly take action on the proposal at that meeting. A discussion ensued regarding a site visit by the Parks and Recreation Advisory Committee, and possibly a joint meeting of the City Council and Parks and Recreation Advisory Committee on November 3. The motion carried unanimously in a voice vote.

## COMMUNICATIONS

**From the Salmon for Oregon Association, Inc. - Appeal of Tourism Facilities Grant Denial.** Nebel reported that he could not confirm that the representative of the Salmon for Oregon Association, Inc. knew that this hearing was scheduled for this evening. He added that he believes it is appropriate to reschedule the appeal until the meeting of October 20, 2014. He noted that the appellant's submission only addressed one issue, and that he would send a detailed communication to the appellant. MOTION was made by Allen, seconded by Saelens to table this matter to the October 20, 2014 Council meeting. The motion carried unanimously in a voice vote.

**From Mayor Roumagoux and Council President Swanson - Report on the Evaluation of the City Manager.** Hawker introduced the agenda item. Roumagoux reported that at the September 15, 2014 City Council meeting, the City Council accepted the report from the Sub-Group to Develop the City Manager Evaluation, which outlined the process for the annual evaluation of the City Manager as required in the employment agreement. She stated that as a result of accepting this process, she initiated the evaluation process, and each City Councilor completed individual evaluations of the City Manager's performance. She added that the policy provides that the Mayor and Council President coordinate the compilation of the evaluation results and prepare a report for review by City Council and City Manager.

Roumagoux stated that the report that she and Swanson submitted for the Council's review and acceptance is included in the packet. She added that the City Manager has met with her and Swanson to review the results of the evaluation.

Roumagoux reported that the City Manager is very pleased with the overall results of the evaluation. She added that he believes that during his first nine months on the job

significant progress has been to try to provide the best services for the citizens within the limitations of the city's financial resources. She stated that the City Manager has been very pleased with the willingness of the Mayor and Council to consider many organizational changes including the way that the City Council conducts business at its meetings. She noted that the City Manager also believes that the city is blessed with great department heads and employees who provide a broad range of services to the citizens and visitors of Newport.

Roumagoux stated that the City Manager is looking forward to completing his first year of service with the city in December, and that he knows that the staff and Council will be able to continue to move the community forward in a constructive direction.

Swanson reviewed the evaluation process. Allen noted that he thinks that the last sentence of the evaluation's summary statement is a fair assessment of what was concluded.

Roumagoux reported that the City Manager had completed a narrative on his self-evaluation. It is important for people to read.

MOTION was made by Saelens, seconded by Allen, that the 2014 report on the evaluation of the City Manager be accepted by the City Council. The motion carried unanimously in a voice vote. Nebel noted that it has been a real pleasure working for the city, and while there have been challenges, he is pleased with the willingness of the City Council, staff, and community members to look at a new way of doing business.

**From Councilors Allen and Beemer - Review and Possible Approval of an Employment Agreement for City Attorney with Steven Rich.** Hawker introduced the agenda item. Allen reported that he and Beemer were requested to complete various reference checks and to negotiate an employment agreement with Steven Rich to serve as City Attorney for consideration of the full Council. He added that he and Beemer reviewed their findings related to the reference checks for Rich at an executive session held earlier today. He stated that if the City Council is prepared to go forward with a formal offer for the position, a proposed employment agreement has been distributed to Council. He noted that Council reviewed the agreement, with the exception of the compensation issue, at the earlier executive session. He added that the goal this evening is to further review the agreement, answer questions, and deal with the letter from Rich that requests that he be allowed to continue a very minimal amount of work for the cities of Rogue River and Gold Hill. Beemer read the letter sent by Rich regarding his other employment. Allen noted that Rich is currently serving as county counsel for Josephine County, and he was allowed to continue this employment during his tenure there. Allen reviewed the terms of the agreement, including the salary which had been negotiated at \$97,000 per year. He discussed the comparison with other Lincoln County jurisdictions noting that this salary is mid-range. Allen reviewed other provisions of the agreement including \$7,500 for relocation expenses, and \$50 monthly for use of his personal cell phone for business work. Allen noted that there is one provision that he would like to have addressed through a motion before the agreement is approved. He added that this provision is that while the city has not engaged the city attorney in this process, and while he is an attorney, he is not, and has not, advised the city in the preparation of this agreement, and that Council needs to make a decision as to whether it is willing to approve this agreement without seeking a legal review from the city attorney.

MOTION was made by Beemer, seconded by Roumagoux, to accept this contract, acknowledging the fact that it was put together by a combination of people, and that an outside legal review is unnecessary. Allen recused himself from discussion of this motion. The motion carried in a voice vote with Allen abstaining.

MOTION was made by Allen, seconded by Saelens, that the employment agreement for position of City Attorney between the City of Newport and Steven B. Rich be approved, and that the Mayor be authorized to execute the agreement. The motion carried unanimously in a voice vote.

MOTION was made by Allen, seconded by Beemer, that under provision 6 of the agreement we just approved and authorized the Mayor to sign; that we give written approval for Rich to continue in his retainer agreements with the cities of Gold Hill and Rogue River, as outlined in his letter to us, and that staff prepare a written communication, with the Mayor's signature, to that effect. The motion carried unanimously in a voice vote.

**Resolution No. 3692 - Requesting Preservation of the USCG Air Facility at Newport, Oregon.** Hawker introduced the agenda item. Roumagoux read Resolution No. 3692. Bill Bain asked how much money the Coast Guard thinks they are actually going to save in this process, and how much money is one life worth. He added that with this closure, there will be additional flight time, and expenses due to the added flight time. MOTION was made by Beemer, seconded by Allen, to adopt Resolution No. 3692 as presented. The motion carried unanimously in a voice vote.

## CITY MANAGER REPORT

**Report and Discussion on Possible Approval of an Ordinance to Create a Local Tax on Recreational Marijuana.** Hawker introduced the agenda item. Nebel reported that on Thursday, September 25, through Saturday, September 27, the League of Oregon Cities annual conference was held in Eugene. He stated that one of the most active discussions related to Proposition 91 which would legalize recreational marijuana use in the state if it passes in the upcoming election. He added that a number of Councilors participated in various sessions regarding the marijuana initiative. He noted that as a result, a significant number of Oregon cities are enacting a local sales tax ordinance that would give local governments the right to tax sales of recreational marijuana that occur within their jurisdiction. He stated that it is recommended that an ordinance be approved with an effective date prior to the effective date of Measure 91, which if approved, would take effect 30 days after the November election. He added that if the City Council approves an ordinance no later than the October 20, 2014 City Council meeting, that city ordinance would take effect prior to the effective date of any ballot initiative. He noted that section 42 of Measure 91 gives the state the exclusive right to tax marijuana. He added that section 58 of the Measure 91 supersedes and repeals inconsistent charters and ordinances, and that any conflicts between the initiative and local ordinances would likely be litigated.

Nebel reported that he asked Lauren Sommers, of Speer-Hoyt, to provide a draft ordinance on taxing marijuana in the city should Measure 91 pass. He noted that the way the ordinance is drafted, medical card holders purchasing medical marijuana from a state authorized dispensary would be excluded from taxation. He added that the tax rate

would be established by a separate resolution that could be modified from time to time. He stated that some municipalities are establishing a specific rate while others are establishing the current rate at 0% and will reevaluate that rate depending on the outcome of Measure 91.

Beemer noted that the message from the League of Oregon Cities Conference is that it is safer to adopt the ordinance at this time, because it will be an uphill battle if done later. Allen added that this was also a topic at the City Attorney's Legal Issues Workshop, and the consensus was that if an ordinance is adopted before the effective date of Measure 91, that the city may be on better footing.

MOTION was made by Swanson, seconded by Beemer, that a public hearing be scheduled for Monday, October 20, 2014 at 6:00 P.M. in the City Council Chambers to consider an ordinance establishing a tax of the sale of recreational marijuana and marijuana infused products in the City of Newport. The motion carried unanimously in a voice vote.

**Approval of an Infrastructure Finance Authority Grant Agreement for the NE 7<sup>th</sup> and Iler Streets Storm Sewer Repair.** Hawker introduced the agenda item. Nebel reported that in January 2012, a winter storm caused severe flooding throughout western Oregon with significant damage to infrastructure within the city including the storm sewer serving NE 7<sup>th</sup> and Iler Streets. He added that despite early efforts to address the storm sewer issue, one ongoing problem has remained relating to the repairs at this location. He stated that since this project was part of a declared disaster, FEMA is funding 75% of repair cost. He noted that Gross has been successful in securing an IFA Special Public Works Fund Grant in the amount of \$66,601 to fund the remaining 25% of the repair costs for a total project of \$266,407. He stated that due to wetlands and other significant restrictions, the revised plan on addressing this storm sewer is to intercept the existing storm sewer 250 feet upstream of the sinkhole. He added that stormwater will be redirected to a point of approximately 80 feet within the Iler Street right-of-way. He added that a second structure will be installed at this location directing the flow approximately 200 feet northward from the existing improved right-of-way until it can be discharged to the surface. He noted that the existing pipe will be abandoned and the failed sewer line and sinkhole will be filled in.

MOTION was made by Swanson, seconded by Beemer, to approve the grant agreement with the Infrastructure Finance Authority in the amount of \$66,601 for the NE 7<sup>th</sup> and Iler Streets storm sewer repairs and authorize the Mayor to sign an agreement on behalf of the City of Newport. The motion carried unanimously in a voice vote.

**Establishing a Meeting Schedule for the Month of December 2014.** Hawker introduced the agenda item. Nebel reported that it is his understanding that the City Council has traditionally held one meeting in December due to the holiday season. He added that the Charter requires Council to meet once monthly. He suggested that the December 15 meeting be cancelled, and that the only meeting in December occur on December 1. He stated that in the event there is a need for Council to act on an item prior to the first meeting in January, a special meeting could be scheduled to deal with that issue. He noted that while the City Council has traditionally held a Town Hall meeting on the fifth Monday of the months containing a fifth Monday, and he does not recommend holding a meeting on December 29 due to the holidays.

MOTION was made by Swanson, seconded by Beemer, to cancel the second meeting in December, which would normally be scheduled for December 15, and not hold a Town Hall meeting on the fifth the Monday of December, which would be December 29, with the only regularly scheduled meeting be held on December 1, 2014. The motion carried unanimously in a voice vote.

Roumagoux requested an excused absence from the December 1, 2014 City Council meeting. MOTION was made by Beemer, seconded by Allen, to excuse Roumagoux from the December 1, 2014 meeting. The motion carried unanimously in a voice vote.

**Status Report - Airport Dedication on October 18, 2014.** Hawker introduced the agenda item. Nebel reported that the Newport Municipal Airport is completing a \$9.6 million renovation of the instrument landing system runway. He stated that this project has been funded largely by FAA Airport Improvement Grants. He added that the city's matching funds have been strengthened by an Oregon Department of Transportation ConnectOregon IV grant. He stated that with such a large investment in the airport's future, a celebration has been planned to inaugurate the new runway. He added that a ribbon cutting ceremony will be held on October 18, 2014 at 11:30 A.M.

## LOCAL CONTRACT REVIEW BOARD MEETING

The City Council, acting as the Local Contract Review Board, met at 8:09 P.M.

**Approval of Task Order No. 8 with Civil West Engineering - Candletree Pump Station Improvements.** Hawker introduced the agenda item. Nebel reported that the Candletree Pump Station located on NE 7<sup>th</sup> Street just south of the Newport Intermediate School was constructed in 1985. He stated that at 30 years-old, the pump station is in need of major upgrades. He noted that the station originally served as a booster station for the Candletree Park area but now primarily serves as a booster pump to fill the Yaquina Heights Water Tank.

Nebel reported that the Yaquina Heights water tank is in serious need of repair due to substantial corrosion, and to complete this repair, a temporary tank would need to be installed so that the tank can be emptied. He stated that to avoid this costly problem, city staff have decided to advance the upgrades to the Candletree Pump Station before the tank repairs so that the pump station can be used as a booster station and meet water demand when the Yaquina Heights tank is out of service, without the need for a temporary tank.

Nebel reported that this task order includes the data collection, engineering, plan development, bidding, and construction administration to renovate and upgrade the Candletree Pump Station. He stated that since this is being funded by bond proceeds for water and sewer fund, the motion would be effective following the 30-day notice period which expires on October 15 if no one files for referral.

MOTION was made by Allen, seconded by Beemer, to authorize the City Manager to execute Task Order No. 8 with Civil West Engineering for the Candletree Pump Station improvements in the amount of \$97,658, on the condition that the city not proceed with the task order until the 30-day referral period for Ordinance No. 2071 expires on October 15. The motion carried unanimously in a voice vote.

**Approval of Task Order No. 15 with Civil West Engineering - Nye Beach Pump Station Grinder Improvements.** Hawker introduced the agenda item. Nebel reported that the Public Works Department has been reviewing potential solutions to address regular failures at the Nye Beach Wastewater Pump Station. He stated that the station regularly gets plugged due to debris from the jail and hotels along Elizabeth Street entering the sewer system. He noted that Task Order No. 15 will provide engineering services to explore either installing an inline grinder or replacing the pump with a grinder pump that would break the debris down to a size that the pumps will pass the debris through the force main.

Nebel reported that this effort follows a demonstration project with Flygt pumps which guaranteed no plugging of the pump. He stated that these pumps plugged regularly during the trial period and the pumps have since been returned to the vendor at no cost to the city. He added that the Lincoln County Jail has implemented toilets that control the number of times that toilets can be flushed to eliminate the flushing of sheets and other large items. He stated that the city has not seen a difference in the operation of the pump station since this change has been made with the station continuing to plug regularly and creating an overflow condition.

MOTION was made by Beemer, seconded by Swanson, to authorize the City Manager to execute Task Order No. 15 with Civil West Engineering for the Nye Beach Pump Station Grinder Improvements in the amount of \$70,384. The motion carried unanimously in a voice vote.

## **RETURN TO CITY COUNCIL MEETING**

Nebel reported that there is an on-line petition supporting the retention of the U.S. Coast Guard Air Facility in Newport. He added that other jurisdictions are preparing resolutions of support.

## **REPORT FROM MAYOR AND COUNCIL**

Roumagoux reported that she met with the Lincoln County Mayors group on September 19. She noted that it was determined that Lincoln County is part of the SW Willamette Solutions Team, and Louise Birk attended the meeting. She added that other issues discussed included water use and rights in the Siletz River.

Roumagoux reported that she attended the Oregon Mayor's Association board meeting and the League of Oregon Cities Conference in Eugene. She noted that she was appointed to another term on the OMA board.

Roumagoux reported that on September 30, she toured the jail and saw the renovated kitchen and infirmary.

Roumagoux reported that on October 2, she juried the Mayor's Choice Award for the Yaquina Arts Association.

Saelens reported that on September 17, the Parks and Recreation Advisory Committee met with the Oregon Coast Community Forest Foundation. He noted that a discussion ensued regarding whether the city is interested in having the OCCFF pursue a grant to develop a management plan for Forest Park.

Saelens reported that on September 22, he attended a meeting of the Business License Ordinance Review Task Force. He indicated that recommendations will be forthcoming.

Saelens reported that on September 23, he met with the Visual Arts Center group.

Saelens reported that on September 25, the pool architectural team met. He noted that it appears the design may meet the basic LEED certification. He added that he is amazed at how good the energy savings should be.

Saelens reported that on September 29, he attended the Town Hall meeting at the northside fire station.

Saelens reported that he attended the Wayfinding Committee meeting on October 3.

Saelens reported that three times this week as he left city hall to the north, motorists came out of Walgreen's without stopping. He asked why there is not a stop sign at that location. Nebel reported that he would follow-up.

Swanson reported that she attended the City Emergency Management meeting. She noted that plans are being made on how to handle emergencies. She asked that the appointment of a City Council liaison to this group be added to the next agenda.

Swanson reported that the next session of Leadership Lincoln is coming up.

Beemer reported that he attended a Habitat for Humanity event on Saturday.

Beemer reported that he had participated in the Chamber of Commerce candidate forum on Friday with Councilors Allen and Saelens and Wendy Engler. He added that it went well.

Beemer reported that he attended the dedication of the northside fire station. He noted that the event was well-received and went well.

Beemer reported that he attended the recent League of Oregon Cities Conference in Eugene.

Allen, in reference to Resolution No. 3692 related to the announced closure of the U.S. Coast Guard Air Facility at the Newport Municipal Airport, noted that he had sent an e-mail to Senator Wyden, the Ports of Newport and Toledo, Representative Gomberg, and Senator Roblan. He suggested sending a copy of the signed resolution to Lincoln County jurisdictions.

Allen reported that he attended a recent FINE meeting at which discussion ensued regarding mapping in federal waters, updates from PMEC on the grid connected test site in federal waters off the coast, and the north site, off Yaquina Head, which is not grid connected.

Allen reported that on September 24, he attended a meeting of the Yaquina Bay Economic Foundation.

Allen reported that he attended the Legal Issues Workshop at the recent League of Oregon Cities Conference, at which there was extensive discussion regarding the recreational marijuana issue.

Allen reported that he attended the Town Hall meeting on September 29. He noted that there was a great turnout; a nice dedication; and a ribbon-cutting that included the "Jaws of Life."

Allen reported that OPAC will be holding a meeting in Newport, at the Best Western, on October 16.

Allen reported that the Audit Committee is tentatively scheduled to meet on October 15, at 9:00 A.M.

## PUBLIC COMMENT

Bain stated that on Wednesday, Mayor Roumagoux will honor the Military Officers Association of America - Oregon Coast Chapter, by welcoming members to the meeting.

Bain stated that he misses this organization and meeting time, but it is fun to come back and see the Council performing well. He thanked Council for hosting the Town Hall meeting in his neighborhood.

## ADJOURNMENT

Having no further business, the meeting adjourned at 8:34 P.M.

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Margaret M. Hawker, City Recorder

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Sandra N. Roumagoux, Mayor

October 6, 2014  
Noon  
Newport, Oregon

The City Council of the City of Newport met in a Work Session, on the above date, in the Conference Room A of the Newport City Hall. On roll call, Swanson, Roumagoux, Beemer, Allen, and Saelens were present. Busby and Sawyer were excused.

Staff attending was as follows: City Manager Nebel, City Recorder Hawker, and Community Development Director Tokos.

Also in attendance were Dennis Anstine and Abbie Tumbleson from the Newport News-Times.

MOTION was made by Beemer, seconded by Allen, to enter executive session pursuant to ORS 192.660(2)(f), to consider information from the City Attorney that is exempt by law from public inspection; ORS 192.660(2)(e) to discuss real property transactions; and ORS 192.660(2)(a) to discuss the employment of a public official - City Attorney. The motion carried unanimously in a voice vote, and Council entered executive session at 12:04 P.M.

MOTION was made by Beemer, seconded by Allen, to return to the City Council Work Session. The motion carried unanimously in a voice vote, and Council exited executive session at 1:58 P.M.

Having no further business, the meeting adjourned at 1:59 P.M.

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Margaret M. Hawker, City Recorder

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Sandra N. Roumagoux, Mayor



## CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: V.B.1.  
Meeting Date: October 21, 2014

### Agenda Item:

RATIFICATION OF THE MAYOR'S APPOINTMENT OF PAUL STANGELAND TO THE PARKS AND RECREATION ADVISORY COMMITTEE FOR A TERM EXPIRING ON DECEMBER 31, 2015

### Background:

There currently is a vacancy on the Parks and Recreation Advisory Committee for a term that will expire on December 31, 2015. Mayor Roumagoux would like to appoint Paul Stangeland to fill that capacity

### Recommended Action:

I recommend that the City Council consider the following motion:

I move to ratify the Mayor's appointment of Paul Stangeland to the Parks and Recreation Advisory Committee for a term expiring on December 31, 2015.

### Fiscal Effects:

None.

### Alternatives:

None recommended.

Respectfully Submitted,  
Spencer R. Nebel  
City Manager

## Cindy Breves

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**From:** CommitteeApp@newportoregon.gov  
**Sent:** Thursday, July 17, 2014 12:19 PM  
**To:** Cindy Breves; Peggy Hawker  
**Cc:**  
**Subject:** Committee Application

Application for City Council - Email Application  
Date: 7/17/2014  
Commission/Committee of Interest: parks and recreation  
Name: Paul Stangeland  
Address:  
Newport Oregon 97365  
Workphone:  
Homephone: same  
Email:  
Occupation: retired  
Employer: n/a

Why do you want to serve on this committee/commission/board/task force, and how do you believe you can add value?  
there are openings to fill and I have interests in the Newport parks and activities carried on within them.

What is a difficult decision you have made concerning issues of bias and/or issues of conflict of interest? as a retired school teacher I like to provide ideas and options and am not into over discussing or arguing a committee decision

Describe the process of how you make decisions. take in known information and collect new data as the a subject progresses

What do you think about consensus decision making? What does the consensus decision making process mean to you?  
consensus means to have the committee members discuss all options, advantages, disadvantages of any project, Then the majority vote prevails.

Describe all other pertinent information/background for this position. school instructor. Cross country and Track coach. Raised two blocks from a Portland park. life guard . general interest in general community activities.



## CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VI.A  
Meeting Date: October 21, 2014

### Agenda Item:

**PUBLIC HEARING AND POSSIBLE ADOPTION OF ORDINANCE NO. 2071 CREATING A LOCAL TAX ON RECREATIONAL MARIJUANA, AND RESOLUTION NO. 3694 ESTABLISHING TAX REATES FOR THIS PURPOSE**

### Background:

On October 6, 2014, the City Council scheduled a public hearing on an ordinance to establish a local tax on recreational marijuana. This action was, in part, the result of attending the annual League of Oregon Cities Conference held in Eugene last month. One of the most active discussion issues, at the conference, related to Proposition 91 that would legalize recreational marijuana use within the State of Oregon. A number of Council members participated in various session regarding the marijuana initiative. A significant number of Oregon cities are enacting a local sales tax ordinance that would give local units of government the right to tax sales of recreational marijuana that occur within their jurisdiction. It is recommended that an ordinance be approved with an effective date prior to the effective date of Measure 91 if that ballot initiative is approved by voters. Measure 91 would take effect 30 days after the November election date. Therefore if the City Council approves an ordinance at the October 21, 2014 City Council meeting, that ordinance would take effect prior to the effective date of any ballot initiative. Please note, however, that section 42 of Measure 91 gives the state the exclusive right to tax marijuana. Section 58 of the Measure 91 supersedes and repeals inconsistent charters and ordinances. Any conflicts between the initiative and local ordinances would likely be litigated.

An ordinance has been drafted by Lauren Sommers, of Speer-Hoyt, on taxing marijuana within the City of Newport should Measure 91 pass. Please note that the way the ordinance is drafted, medical card holders purchasing medical marijuana from a State authorized dispensary would be excluded from taxation. The tax rate would be established by a separate resolution that could be modified from time to time. Some municipalities are establishing a specific rate while others are establishing the current rate at 0% and will reevaluate that rate depending on the outcome of Measure 91.

### Recommended Action:

I recommend that the Mayor conduct a public hearing Ordinance No. 2071 which establishes a local tax on the sale of recreational marijuana in the City of Newport.

I further recommend that Council consider the following the following motions:

I move to read Ordinance No. 2071, establishing a tax on the sale of recreational marijuana and marijuana-infused products in the City of Newport, by title only, and place for final passage.

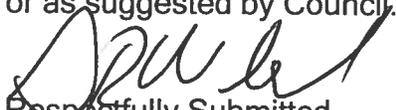
I further move to adopt Resolution No. 3694 establishing a tax rate of zero percent on the sale of recreational marijuana and marijuana-infused products in the City of Newport.

Fiscal Effects:

This ordinance may give the city an opportunity to collect revenue to offset administrative and law enforcement efforts in regulating recreational marijuana.

Alternatives:

Do not establish a tax on marijuana, include a tax on medical marijuana in the ordinance, or as suggested by Council.



Respectfully Submitted,  
Spencer R. Nebel  
City Manager

CITY OF NEWPORT

ORDINANCE NO. 2071

AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF NEWPORT

WHEREAS, Section 4 of the Newport Charter provides:

Powers of the City. The city has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers;

WHEREAS, the city desires to tax the sale or transfer of marijuana and marijuana-infused products within the city;

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

SECTION 1.

Purpose. For the purposes of this ordinance, every person who sells marijuana or marijuana-infused products in the City of Newport is exercising a taxable privilege. The purpose of this ordinance is to impose a tax upon the retail sale of marijuana and marijuana-infused products.

Definitions.

- A. "City Manager" means the City Manager of the City of Newport or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property, or other consideration from sales of marijuana and marijuana-infused products that is subject to the tax imposed by this ordinance.
- C. "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- D. "Marijuana Infused Products" means products infused with usable marijuana that are intended for use, ingestion, or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures.
- E. "Medical use of marijuana" means the production, possession, delivery, distribution or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of

the person's debilitating medical condition.

- F. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
- G. "Purchase or Sale" means the retail acquisition or furnishing for consideration by any person of marijuana or marijuana infused products within the City and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.
- H. "Purchaser" means any person who acquires marijuana from a seller for any valuable consideration. "Purchaser" does not mean a registry identification card holder who acquires marijuana or marijuana-infused products for medical use from a dispensary registered by the Oregon Health Authority under ORS 475.314.
- I. "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.
- J. "Retail sale" means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.
- K. "Seller" means any person who is required to be licensed or registered, or has been licensed or registered by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property, or other consideration. "Seller" does not mean a dispensary registered by the Oregon Health Authority under ORS 475.314 to provide marijuana or marijuana-infused products to registry identification card holders for medical use.
- L. "Tax" means either the tax payable by the purchaser or the aggregate amount of taxes a seller is required to remit during the period for which the seller is required to report collections under this ordinance.

#### Levy of Tax.

- A. There is hereby levied and shall be paid a tax by every purchaser exercising the taxable privilege of purchasing marijuana or marijuana-infused products as defined in this ordinance. The tax constitutes a debt owed by the purchaser to the city and shall be extinguished only by payment to the seller or to the city.
- B. The amount of tax levied shall be established by a resolution of the City Council.

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- C. The purchaser shall pay the tax to the seller at the time of the purchase or sale of the marijuana or marijuana-infused products.
- D. Every seller shall collect the tax from the purchaser at the time of the purchase or sale of the marijuana or marijuana-infused products. The tax collected by the seller constitutes a debt owing from the seller to the City.

Deductions. The following deductions shall be allowed against sales received by the seller providing marijuana:

- A. Refunds of sales actually returned to any purchaser;
- B. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

Seller Responsible for Payment of Tax.

- A. Every seller shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October, and January) make a report to the City Manager, on forms provided by the city, specifying the total sales subject to this ordinance and the amount of tax collected under this ordinance. A report shall not be considered filed until it is actually received by the City Manager.
- B. At the time the report is filed, the full amount of the tax collected by the seller shall be remitted to the City Manager.
- C. Payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. If the City Manager, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the city in a particular tax or factual situation, the City Manager may order such a change. The City Manager may establish shorter reporting periods for any seller if the City Manager deems it necessary in order to insure collection of the tax. The City Manager also may require additional information in the report relevant to payment of the liability. When a shorter reporting period is required, penalties and interest shall be computed according to the shorter reporting period. Reports and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this ordinance shall be held in trust for the account of the City until remitted to the City Manager. A separate trust bank account is not required in order to comply with this provision.
- D. For good cause, the City Manager may extend the time for filing a report or paying the tax for not more than one month. Further extension may be granted only by the City Council. A seller to whom an extension is granted shall pay interest at

the rate of one percent (1%) per month on the amount of tax due, without proration for a fraction of a month. If a report is not filed and if the tax and interest due are not paid by the end of the extension period, the interest shall become a part of the tax for computation of the penalties prescribed in this ordinance.

- E. Every seller required to remit the tax imposed in this ordinance shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.
- F. Every seller must keep and preserve in an accounting format established by the City Manager records of all sales made by the seller as well as such other books or accounts as may be required by the City Manager. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The City Manager shall have the right to inspect all such records upon request.

#### Penalties and Interest.

- A. Any seller who fails to remit any portion of any tax imposed by this ordinance within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. Any seller who fails to remit any delinquent remittance on or before the 60<sup>th</sup> day following the date on which the remittance first became delinquent, shall pay an additional delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- C. If the City Manager determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be assessed by the city in addition to the penalties stated in subparagraphs A and B of this section.
- D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed, and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid.
- F. A seller who fails to remit the tax within the required time may petition the City Council for waiver and refund of the penalty or a portion of it. The City Council may, if good cause is shown, direct a refund of the penalty or a portion of it. Any such hearing will be conducted under the procedures described in the Appeal section of this ordinance.

**Failure To Report and Remit Tax -Determination of Tax by City Manager.** If any seller fails to make, within the time provided in this ordinance, any report of the tax required by this ordinance, or if the City Manager questions the accuracy of a report, the City Manager

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shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the City Manager procures such facts and information as are obtainable, upon which to base the assessment of any tax imposed by this ordinance and payable by any seller, the City Manager shall proceed to determine and assess against such seller the tax, interest, and penalties provided for by this ordinance. The City Manager shall give a notice of the amount to be assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the seller's last known address. The seller may make an appeal of such determination as provided in the Appeal section of this ordinance. If no appeal is filed, the City Manager's determination is final and the amount of tax assessed by the City Manager is immediately due and payable.

### Appeal.

- A. Any person aggrieved by any decision of the City Manager with respect to the amount of tax, interest, and penalties owing under this ordinance, if any, may appeal to the City Council by filing a notice of appeal with the City Manager within fifteen (15) days of mailing of the notice of the City Manager's decision. The City Manager shall fix a time and place for hearing the appeal, and shall give the appellant fifteen days written notice of the time and place of the hearing before the City Council. The notice of hearing shall be served personally or by deposited in the United States mail, postage prepaid, addressed to the appellant at the appellant's last known address.
  - B. The appellant shall pay a nonrefundable appeal fee to facilitate the appeal. Appeal fees shall be set at \$150 for each decision appealed, and may be adjusted by resolution of the City Council.
  - C. The parties shall be entitled to appear personally and by counsel and to present such facts, evidence and arguments as may tend to support the respective positions on appeal.
  - D. The City Council shall hear and consider any records and evidence presented bearing upon the City Manager's determination of the amount due, and make findings affirming, reversing or modifying the determination.
  - E. Informal disposition may be made of any appeal by stipulation, agreed settlement, consent order, or default.
  - F. The action of the City Manager shall be stayed pending the outcome of an appeal properly filed pursuant to this section.
  - G. Failure to strictly comply with the applicable appeal requirements, including but not limited to the required elements for the written notice of appeal, time for filing of the notice of appeal, and payment of the applicable appeal fee, shall constitute jurisdictional defects resulting in the dismissal of the appeal.
  - H. The findings of the City Council shall be final and conclusive, and shall be
- Ord. No. 2071

served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found by the City Council to be due shall be immediately due and payable upon the service of notice.

### Refunds.

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the city under this ordinance, it may be refunded as provided in paragraph B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the City Manager within one year of the date of payment. The claim shall be made on forms furnished by the City Manager.
- B. The City Manager shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The City Manager shall notify the claimant in writing of the City Manager's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the City Manager to be a valid claim, in a manner prescribed by the City Manager a claimant may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once, or erroneously collected or received. The claimant shall notify the City Manager of the claimant's choice no later than 15 days following the date the City Manager mailed the determination. In the event the claimant has not notified the City Manager of the claimant's choice within the 15 day period, the claimant is a seller, and the claimant is still in business, a credit will be granted against the claimant's tax liability for the next reporting period. If the claimant is a seller and the claimant is no longer in business, a refund check will be mailed to the claimant at the address provided in the claim form.
- C. No refund shall be paid under the provisions of this section unless the claimant established the right to a refund by written records showing entitlement to such refund and the City Manager has acknowledged the validity of the claim. All refunds shall be made from the fund receiving marijuana tax revenues.

### Actions to Collect.

- A. Any tax required to be remitted by any seller under the provisions of this ordinance shall be deemed a debt owed by the seller to the city. Any such tax collected by a seller which has not been remitted to the city shall be deemed a debt owed by the seller to the city. The city may bring an action in the name of the City of Newport to collect the amount of tax due and owing as well as any penalties and interest. In lieu of filing an action for the recovery, the City of Newport, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the City of Newport has complied with the provisions set forth in ORS 697.105, in the event the city turns over a delinquent tax account to a collection agency, it may add to the amount owing a reasonable fee to compensate the City for payment of the collection agency's fees.

### Violations.

- A. It is unlawful for any seller or any other person so required to fail or refuse to furnish any report required to be made, or fail or refuse to furnish a supplementary report or other data required by the City Manager or to enter a false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ordinance.
- B. Violation of any provision of this ordinance shall be punishable by a fine established by Chapter 1.50.010 of the Newport Municipal Code. Every day in which the violation is caused or permitted to exist constitutes a separate infraction, and the punishment therefor shall be in addition to any other penalty, interest, sum or charge imposed by this ordinance. Delinquent taxes and fees, penalty and interest imposed by this ordinance may be collected in a civil action.
- C. The remedies provided by this section are not exclusive and shall not prevent the city from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

Confidentiality. Except as otherwise required by law, the city shall endeavor not to divulge, release, or make known in any manner any financial information submitted or disclosed to the city under the terms of this ordinance. Nothing in this section shall prohibit:

- A. The disclosure of the names and addresses of any person who is operating a licensed or registered establishment from which marijuana is sold or provided; or
- B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- C. Presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the city or an appeal from a determination by the City Manager for amount due the city under this ordinance; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- E. The disclosure of records related to a business' failure to report and remit the tax for regulatory, collections, or enforcement purposes. The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

### Audit of Books, Records or Persons.

- A. It shall be the duty of every seller liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years,  
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all records, books, reports, income tax reports and other matters required by this chapter as may be necessary to determine the amount of such tax as the seller may have been liable for the collection of and payment to the City, which records the City Manager shall have the right to inspect upon request. Every seller shall maintain records of marijuana purchase and sales, accounting books, and records of income. Sellers must, at a minimum, maintain a cash receipt and deposit journal, and a cash disbursements journal/check register for all authorized deductions. These records and books shall reconcile to the tax reports and be auditable. If the City Manager finds the books and records of the seller are deficient in that they do not provide adequate support for tax reports filed, or the seller's accounting system is not auditable, it shall be the responsibility of the seller to improve its accounting system to the satisfaction of the City Manager.

- B. The city, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the city for that purpose, any books, papers, records, or memoranda, including copies of the seller's state and federal income tax return, bearing upon the matter of the seller's tax reports. All books, invoices, accounts and other records shall be made available within the city limits and be available at any time during regular business hours for examination by the City Manager or an authorized agent of the City Manager. If any seller refuses to voluntarily furnish any of the foregoing information when requested, the City Manager may immediately seek a subpoena from the Newport Municipal Court to require that the seller or a representative of the seller attend a hearing or produce any such books, accounts and records for examination.

Forms and Regulations. The City Manager is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of reports, the ascertainment, assessment, and collection of the marijuana sales tax, and in particular and without limiting the general language of this ordinance, to provide for:

- A. A form of report on sales and purchases to be supplied to all sellers;
- B. The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this ordinance.

SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

Ord. No. 2071

SECTION 4. This ordinance shall take effect 30 days after passage.

Adopted by the Newport City Council on \_\_\_\_\_, 2014.

Signed by the Mayor on \_\_\_\_\_, 2014.

\_\_\_\_\_  
Sandra N. Roumagoux, Mayor

ATTEST:

\_\_\_\_\_  
Margaret M. Hawker, City Recorder

Approved:

\_\_\_\_\_  
City Attorney

CITY OF NEWPORT

RESOLUTION NO. 3694

ESTABLISHING A TAX RATE  
ON RECREATIONAL MARIJUANA  
AND MARIJUANA-INFUSED PRODUCTS

Findings:

1. The Newport City Council adopted Ordinance No. 2071 on October 21, 2014 establishing a tax on recreational marijuana and marijuana-infused products in the City of Newport.
2. Ordinance No. 2071 provides that the Council shall establish a tax rate on recreational marijuana and marijuana-infused products by resolution.

THE CITY OF NEWPORT RESOLVES:

Section 1. Pursuant to Ordinance No. 2071, the City Council of the City of Newport establishes a tax rate of zero percent (0%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by an individual who is not purchasing marijuana or marijuana-infused products under the Oregon Medical Marijuana Program.

Section 2. This resolution is effective upon adoption.

Adopted by a \_\_\_\_\_ to \_\_\_\_\_ vote of the Newport City Council on October 21, 2014.

Signed by the Mayor on: \_\_\_\_\_

\_\_\_\_\_  
Sandra N. Roumagoux, Mayor

ATTEST:

\_\_\_\_\_  
Margaret M. Hawker, City Recorder

FOR IMMEDIATE RELEASE

CONTACT: Spencer Nebel  
City Manager

541.574.0603

PUBLIC HEARING  
ON ORDINANCE NO. 2071 ESTABLISHING A TAX  
ON RECREATIONAL MARIJUANA AND MARIJUANA-INFUSED PRODUCTS  
AND ON RESOLUTION NO. 3694 SETTING THE TAX RATE

The Newport City Council will hold a public hearing on Ordinance No. 2071 which, if adopted, would allow the city to tax the sales of recreational marijuana and marijuana-infused products. The hearing will be held on Tuesday, October 21, 2014, at 6:00 P.M., in the City Council Chambers of the Newport City Hall, 169 SW Coast Highway.

Ordinance No. 2071 would allow the city to establish a tax on the sale of recreational marijuana and marijuana-infused products at a rate set by Council resolution. The City Council will also be considering the adoption of Resolution No. 3694 if Ordinance No. 2071 is adopted. Resolution No. 3694 would establish a tax rate of zero percent of the gross sale amount paid to the seller of marijuana and marijuana-infused products by an individual who is not purchasing marijuana or marijuana-infused products under the Oregon Medical Marijuana Program.

Further information is available from Spencer Nebel, City Manager, at [s.nebel@newportoregon.gov](mailto:s.nebel@newportoregon.gov), or by telephone at 541.574.0603.

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## CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VII.A  
Meeting Date: October 21, 2014

### Agenda Item:

### FROM THE BUSINESS LICENSE WORK GROUP - A REPORT ON THE UPDATE TO THE BUSINESS LICENSE AND TAXI LICENSE ORDINANCES

### Background:

The City Council has established a Business License Work Group to review and modify, where necessary, the city's business license and taxi license ordinances. Councilor Ralph Busby has chaired this effort. The Business License Work Group thought it would be appropriate to provide an update to the City Council on efforts to clarify certain provisions of the business license, and to review changes to the process of issuing a taxicab endorsement.

Please note that the most significant change to the city's taxi license code is that the language restructures the process to provide for a taxicab endorsement to be issued administratively without a hearing before the City Council. The license process will be more consistent with other business licenses issued by the city. It will reduce the burdens for applicants to meet in applying for these licenses. The Business License Work Group has made revisions to the draft ordinance relating to taxicabs. If the City Council is in agreement with these changes, we will forward the changes to legal counsel for legal review. If there are no significant changes, a hearing on the revised taxi license ordinance could be scheduled on the November 17, 2014 City Council meeting.

Also attached are the revisions to the city's business license code. The changes address a range of issues that can be found in the marked up version of the code. These changes are also reflective of a review of 18 other business license ordinances from across the state. It is anticipated that a hearing could be held on an ordinance to amend the code provisions for business licenses at the November 17, 2014 meeting.

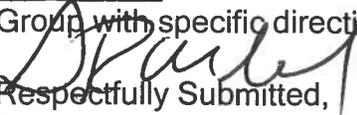
Barring any different direction from the City Council, we will proceed with this schedule.

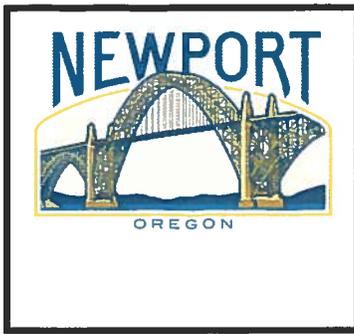
### Recommended Action:

No action required at this time.

Fiscal Effects: None.

Alternatives: Redirect the proposed code changes back to the Business License Work Group with specific directions for any modifications or as suggested by the City Council.

  
Respectfully Submitted,  
Spencer R. Nebel  
City Manager



Agenda Item # \_\_\_\_\_  
Meeting Date October 20, 2014

**CITY COUNCIL/URBAN RENEWAL  
AGENCY AGENDA ITEM SUMMARY**  
City of Newport, Oregon

Issue/Agenda Title Business License Work Group Report on Business and Taxi License Ordinance Updates

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval: \_\_\_\_\_

**ISSUE BEFORE THE COUNCIL:** Update from the Business License Work Group on its effort to prepare amendments to the City’s Business and Taxi License Ordinances.

**STAFF RECOMMENDATION:** This is an opportunity for the Council to ask questions about the draft amendments in advance of scheduling them for adoption at a future meeting.

**PROPOSED MOTION:** No motion is required. Suggestions can be made for further work or outreach. If the Council feels the amendments are ready for potential adoption then it can make a motion to set a date and time for public hearings. The amendments must be made by ordinance. With that in mind, staff would suggest that the hearing for the taxi cab ordinance be no earlier than November 3<sup>rd</sup> and the hearing for the business license ordinance no earlier than November 17<sup>th</sup>.

**KEY FACTS AND INFORMATION SUMMARY:** The City Council formed a Business License Work Group to evaluate the City’s business license code and process to address concerns that had been raised by members of the public since it was last revised and to make it clearer and more user friendly. The Council later forwarded the taxi cab ordinance to the group for a similar review. The Business License Work Group met on a half a dozen occasions between April and September of this year. Agendas and minutes from those meetings are posted on the City’s website at: <http://thecityofnewport.net/citygov/comm/blr.asp>.

A draft ordinance has been prepared amending the taxi license code. The code has been restructured with the primary change being that a taxi cab endorsement would be issued administratively, without a hearing before the City Council. Existing taxi cab operators were invited and participated in the Work Group discussion involving these edits. Draft changes have also been prepared for the business license code. They address a range of issues that are described in detail in the attached markup. The proposed changes are a byproduct of the Group’s review of business license ordinance that have been enacted around the state (18 in all). A draft ordinance has not yet been prepared and a fee resolution will also be needed to put in place the changes. That is why November 17<sup>th</sup> would be the earliest date that a hearing could be held, as it will take some time to prepare the documents and have them reviewed by legal counsel.

**OTHER ALTERNATIVES CONSIDERED:** The Work Group considered a number of alternatives as it deliberated and prepared the proposed amendments.

**CITY COUNCIL GOALS:** Updating the business license code has been discussed as a Council goal.

**ATTACHMENT LIST:**

- Draft Ordinance No. 2058 repealing and re-enacting Chapter 4.15 of the Newport Municipal Code pertaining to taxi cabs.
- Mark-up copy of revisions to Chapter 4.05 of the Newport Municipal Code related to business licensing, dated October 14, 2014.

**FISCAL NOTES:** There are no fiscal impacts associated with these changes. A fee resolution is needed in conjunction with the business license code changes because existing fees, such as those for code violations, which are set in the existing ordinance are being deleted in favor of language that defers them to a fee resolution.

**CITY OF NEWPORT**

**ORDINANCE NO. 2058**

**AN ORDINANCE REPEALING AND RE-ENACTING  
CHAPTER 4.15 OF THE NEWPORT MUNICIPAL CODE  
PERTAINING TO TAXICABS**

**WHEREAS**, the City of Newport Charter provides that the city has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant; and

**WHEREAS**, the above referenced grant of power has been interpreted as affording the city all legislative power under the home rule provisions of the Oregon Constitution; and

**WHEREAS**, it is the purpose of this ordinance to require that persons operating taxicabs do so in a safe, fair, and efficient manner; and

**WHEREAS**, the taxicab industry is an important part of the city's transportation system, and transportation fundamentally impacts the well-being of the citizens, and some regulation is necessary to ensure that the public safety is protected, the public need provided for, and the public convenience promoted; and

**WHEREAS**, the City Council adopted Ordinance No. 1935 pertaining to taxicabs on September 4, 2007 and the ordinance needs to be updated to address safety, equity, and efficiency.

**THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

Section 1. Chapter 4.15 of the Newport Municipal Code, and all previous ordinances related to the licensing of taxicabs are repealed and re-enacted as shown in the attached Exhibit A.

Section 2. This ordinance will become effective thirty days from the date of adoption.

Adopted by the Newport City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Sandra N. Roumagoux, Mayor

**ATTEST:**

\_\_\_\_\_  
Margaret M. Hawker, City Recorder

## EXHIBIT A

### ORDINANCE NO. 2058

#### 4.15.010 Definitions

A. Except where the context clearly indicates otherwise, the following words shall mean:

1. **"City Manager"** means the City of Newport City Manager or his/her designee.
2. **"Driver"** means every person who is, or acts under or at the direction of, the owner, agent, or employee, and is in charge of operating any taxicab.
3. **"Endorsement"** means a taxicab endorsement to a business license to allow the business to operate a taxicab business in the city.
4. **"Flat rate"** is a fare which remains constant regardless of the distance traveled or time involved.
5. **"Limousine"** is a vehicle that is used in a limousine service operation in which the destination and route traveled may be controlled by the passenger and the fare is calculated on the basis of any combination of initial fee, distance traveled and waiting time if the vehicle:
  - a. Is a passenger vehicle with a passenger seating capacity that does not exceed eight;
  - b. Carries passengers for hire between points in Oregon; and
  - c. Operates on an irregular route basis.
6. **"Nonemergency medical transport vehicle"** means a vehicle that carries a person for hire and such person requires nonemergency medical treatment or supervision by an emergency medical technician or first responder certified by the Oregon State Health Division while in the vehicle.
7. **"Operate"** means to drive a vehicle, to use a vehicle in the conduct of business, to receive money from the use of a vehicle, or cause or allow another person to do the same.
8. **"Owner"** means every person having use or control of any taxicab whether as owner, lessee, or otherwise.

9. **"Permit"** means Police Chief's authorization of a driver to operate a taxicab listed in an endorsement to the business license.
10. **"Police Chief"** means the City of Newport Police Chief or his/her designee.
11. **"Street"** means any street, alley, avenue, road, lane, highway, or public place in the city used for the purpose of public travel.
12. **"Taxicab"** means any vehicle that carries passengers for hire whose journey has originated in the city, where the destination and route may be controlled by a passenger, and the fare is calculated on the basis of any combination of an initial fee, distance traveled, and delay, or the fare is a flat rate.
13. **"Taxicab Driver Permit"** means a permit issued to an individual to operate a taxicab in conjunction with a business possessing a taxicab endorsement to its business license.
14. **"Temporary Taxicab Driver Permit"** means a permit issued to an operator for a special community event, such as the annual Seafood and Wine Festival. A temporary permit will be effective only for the special event for the particular year of the permit application from 12:01 A.M. on the first day of the event and ending at 11:59 P.M. immediately following the last day of the event.

- B. Any vehicle that has an appearance similar to a taxicab is a taxicab for the purposes of this Chapter.
- C. As used in this Chapter, "taxicab" does not include licensed ambulances, nonemergency medical transport vehicles, regular-route scheduled buses, state-approved buses engaged in charter service, limousines, courtesy vehicles operated by hotels and motels as a convenience for registered guests where no charges are made, vehicles operated for the exclusive use of senior citizens or persons with disabilities, vehicles contracted for special events by non-profit organizations.

#### **4.15.020 Taxicab Endorsement or Temporary Taxicab Driver Permit Required**

- A. No person shall operate any taxicab business in the city without possessing a valid taxicab endorsement to the business license for that business and its vehicles issued pursuant to this Chapter, as well as any other license required by the city.
- B. No person shall operate a taxicab during a special event without having first obtained a temporary taxicab driver permit.

#### **4.15.030 Taxicab Endorsement Application Required**

- A. An application for a taxicab endorsement to a business license shall be filed with the Police Chief. The application must be verified under penalty of perjury and contain the following information and documentation:

1. The name, business address, and residence address of the owner or person applying.
  2. The make, type, year of manufacture, and seating capacity of the vehicle(s) for which application for taxicab endorsement is made.
  3. A description of the proposed color scheme, insignia, trade style, or any other distinguishing characteristics of the proposed vehicle design.
  4. A statement whether the applicant or any officers of the applicant have been convicted of any felony, misdemeanor or violation of any municipal ordinance or state law, including non-moving traffic violations and parking offenses, the nature of the offense and the punishment or penalty assessed.
  5. A policy of insurance in the manner and form required under 4.15.150.
  6. Payment of a nonrefundable fee as provided by (B) of this section.
- B. The fee is to be set by resolution of the City Council.
- C. On receipt of an application for a taxicab endorsement to a business license, the Police Chief shall be responsible for conducting an investigation of the owner or applicant within 30 days from the date the application is filed. The following information is required:
1. Copy of driver license;
  2. Two (2) passport-sized copies of a recent photograph of the applicant;
  3. FBI "Applicant" fingerprint card (not required for renewal or Temporary Taxicab Driver's Permit application). These are obtained at the Lincoln County Sheriff's Office);
  4. Fee in the amount set by Council resolution.
  5. The applicant does not owe the city any monies due to unpaid traffic fines, parking fines, or any other fee.
- D. If the Police Chief denies an application for a taxicab endorsement to a business license, or the taxicab endorsement is revoked or suspended by the Police Chief, the denial may be appealed to the City Manager or his/her designee. The decision of the City Manager is subject to appeal to the City Council.
- E. All taxicab endorsements expire on June 30 of each calendar year, and may be renewed from year to year upon application to the Police Chief. The fee for a taxicab endorsement renewal shall be set by City Council resolution.

#### **4.15.040 Issuance of Taxicab Endorsement**

The Police Chief will issue a taxicab endorsement to operate a taxicab if the applicant has met the requirements of this Chapter.

#### **4.15.050 Taxicab Driver Permit and/or Temporary Taxicab Driver Permit Required**

It is unlawful for any person to operate a taxicab in the city without a taxicab driver permit, or a temporary taxicab driver permit which was issued by the Police Chief in accordance with the terms of this Chapter.

- A. Application for a Taxicab Driver Permit or a Temporary Taxicab Driver Permit. A person may apply for a taxicab driver permit or temporary taxicab driver permit by submitting a completed application to the Police Chief accompanied by the payment of a fee established by City Council resolution. The application must include:
1. Copy of driver license;
  2. Two (2) passport-sized copies of a recent photograph of the applicant;
  3. FBI "Applicant" fingerprint card (not required for renewal or Temporary Taxicab Driver Permit application) which can be obtained from the Lincoln County Sheriff's Office);
  4. Check payable to the Oregon State Police, at current rate (not required for renewal or Temporary Taxicab Driver Permit application);
  5. Copy of receipt for payment of fees from the city's Finance Department.
- B. Upon receipt of a taxicab driver permit or temporary taxicab driver permit application, the Police Chief shall be responsible for investigating the applicant's background as necessary to verify compliance with subsection C. of this section, including initiating a criminal background check.
- C. The Police Chief shall not issue a taxicab driver permit or a temporary driver permit unless the following applicant information has verified:
1. Is 21 or more years of age;
  2. Possesses a valid Oregon driver's license;
  3. Has not had a driver's license revoked or suspended by any state within the last five years;
  4. Did not make any false statements in the application;

5. Has been investigated by the Police Chief and found to have a satisfactory background.

a. In conducting the investigation of the applicant, the Police Chief shall verify that the applicant has not been convicted of any felony or misdemeanor involving a crime against persons as defined in ORS Chapter 163, including but not limited to homicide, manslaughter, assault, kidnapping, sexual offenses, harassment and stalking; or any violation of the Oregon Vehicle Code defined as a felony or misdemeanor, including driving under the influence of intoxicants as defined in ORS Chapter 813; or any misdemeanor involving theft or fraud.

b. Where the application or other information provided by the applicant indicates a conviction for violation of ORS Chapter 811, the Police Chief shall investigate the violation and determine whether the nature of the violation, when viewed in light of the circumstances of the violation and the city's duty to protect the public, is such that a reasonable person would believe the driver so convicted is an unacceptable risk to public safety. If the Police Chief believes such a risk exists, and the applicant's background check is not satisfactory, and the Police Chief shall not issue a taxicab driver permit or temporary driver permit to the applicant.

c. The applicant does not owe the city any monies due to unpaid traffic fines, parking fines, or any other fee.

D. If the Police Chief determines that the applicant meets the requirements of this Chapter, including paying any required fees, the Police Chief shall issue the taxicab driver permit or the temporary driver permit.

E. If the application is denied, or a taxicab driver permit or temporary driver permit is revoked or suspended by the Police Chief, the denial may be appealed to the City Manager or his/her designee. The decision of the City Manager is subject to appeal to the City Council.

F. All taxicab driver permits expire on June 30 of each calendar year, and may be renewed from year to year upon application to the Police Chief. The fee for a renewal permit shall be set by resolution of the City Council.

G. As a condition of licensing, a taxicab driver and temporary taxicab driver shall agree in writing to notify the Police Chief within ten days of conviction of any crime included in subsection (C)(5)(a) or (b) of this section.

#### **4.15.060 Denial, Reissuance, Transfer, Cancellation, Suspension, or Revocation of Taxicab Endorsement, Taxicab Driver Permit, or Temporary Taxicab Driver Permit**

A. No taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit may be sold, assigned, mortgaged, or otherwise transferred.

- B. Any application for a taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit, or a taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit may be denied, suspended, or revoked by the Police Chief if any one or more of the following conditions exist:
1. If the possessor of a taxicab endorsement ceases to operate any taxicab for a period of 15 consecutive days without obtaining permission to cease such operation from the Police Chief.
  2. The taxicab endorsement, taxicab driver permit holder, or temporary taxicab driver permit holder fails to operate the taxicab in accordance with the applicable provisions of this Chapter.
  3. The taxicab endorsement holder or the taxicab driver permit holder fails to pay any of the fees or payments required to be paid by the provisions of this Chapter.
  4. The taxicab endorsement owner, taxicab driver permit holder, or temporary taxicab driver permit holder no longer qualifies for a taxicab endorsement, driver permit, or temporary driver permit under the provisions of this Chapter.
  5. The arrest or conviction for any criminal offense of any officer or principal managing employee of the taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder involving the operation of the taxicab business;
  6. Any taxicab accident required to be reported to the state involving a vehicle driven for the taxicab endorsement holder or by a temporary taxicab driver;
  7. The filing of a lawsuit against or on behalf of the taxicab endorsement holder related to the operation of the taxicab company;
  8. The filing of a lawsuit against or on behalf of a temporary taxicab driver related to the operation of a temporary taxicab service;
  9. The initiation of bankruptcy proceedings or corporate or partnership dissolution by the taxicab company; (Why would we need this information?)
  10. Lapse, cancellation, or reduction of coverage of any insurance policy the Police Chief relied on in issuing a taxicab endorsement, taxicab driver permit, temporary taxicab driver permit or renewal of the taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit.
  11. Any arrest, charge, or conviction of the taxicab driver or temporary taxicab driver for any criminal offense, or any traffic violation, that occurs during, or arises out of, the taxicab drivers or temporary taxicab driver's operation of a taxicab;

12. Any arrest, charge, or conviction of the taxicab driver or temporary taxicab driver for any criminal offense involving theft, robbery, burglary, assault, sex crimes, drugs, prostitution, traffic crimes, or any related offense;
13. Any vehicle accident required to be reported to the state involving any taxicab operated by the taxicab driver or temporary taxicab driver;
14. Any restriction, suspension, or revocation of the taxicab, or temporary taxicab, driver's motor vehicle driver's license.

C. After the city has issued a taxicab endorsement, any change in the driver name or vehicle list requires the applicant to notify the Police Chief within 30 days of the change. The expiration date of the taxicab endorsement will remain the same.

#### **4.15.070 Surrender of Taxicab Endorsement, Driver Permit, or Temporary Driver Permit**

Any taxicab endorsement, driver permit, or temporary driver permit that is suspended or revoked by the Police Chief shall be surrendered to the Police Chief and the operations of any taxicab shall cease.

#### **4.15.080 Fees for Taxicab Endorsement, Taxicab Driver Permit, and Temporary Taxicab Driver Permit**

No taxicab endorsement, driver permit, or temporary taxicab driver permit may be issued, or a taxicab business continue in operation, until the applicant has paid the city's fees as established by City Council resolution.

#### **4.15.090 Inspection of Vehicles**

- A. Prior to the operation of any vehicle, with the exception of temporary taxicab driver permit holders, under the provisions of this Chapter and at least annually thereafter, the vehicle shall be inspected by an automobile mechanic located within Lincoln County and shall be certified to be in safe operating condition. An inspection for safe operating conditions must include, but is not limited to, inspection of brakes including parking brake; all lights, signals and reflectors; exhaust system; steering system; wipers including washers; suspension components; mirrors; horn and other warning devices; tires and restraint system. Record of such inspections, clearly identifying the vehicle by license plate number and vehicle identification number, must be made available to the city upon initial application and annual renewal.
- B. In addition to the required initial and annual inspections, inspection or testing of all parts vital to the safe operation of the vehicle such as brakes, steering gear, tires, lights, and signaling devices shall be made at the beginning of each shift or each day by the driver. Any condition found then or at any other time that will prevent the safe operation of the vehicle shall be corrected before the vehicle is used.

- C. In the event a record of vehicle inspection is not produced within 48 hours of request, or if the record produced indicates the inspection occurred more than 12 months prior to the current date, the city shall notify the holder of a taxicab endorsement to complete an inspection showing compliance with the standards of this Chapter and deliver the record to the city within 48 hours of the written request.
- D. Failure to timely produce a satisfactory record of inspection shall be grounds to deny, suspend, or revoke a taxicab endorsement and also constitutes a violation of this Chapter subject to enforcement under 4.15.170.
- E. A taxicab endorsement holder who permanently retires any taxicab from service must notify the Police Chief within 15 days from the date the taxicab is retired from service.

#### **4.15.100 Operating Regulations**

- A. Unless otherwise directed by the passenger, any taxicab driver, or temporary taxicab driver, hired to transport passengers to a definite point shall use the most direct route possible that will carry the passenger to that destination safely and expeditiously.
- B. Every taxicab driver or temporary taxicab driver, if requested, shall give a correct receipt upon payment of the correct fare.
- C. No person may refuse to pay a lawful taxicab fare after hiring a taxicab.
- D. Whenever a passenger occupies a taxicab, the driver must not permit any other person to occupy the taxicab without the consent of the original passenger.
- E. Every vehicle operating under this Chapter is to be kept in a clean, sanitary, and good operational condition.

#### **4.15.110 Equipment**

Every taxicab, with the exception limousines and those vehicles used by permitted temporary taxicab drivers, is to be equipped with the following:

- A. Except for taxicabs charging flat rates, a taximeter in accurate operating condition with a lighted face which can be read at all times by the customer. Taxicabs charging flat rates must be equipped with a sign complying with 4.15.120 stating "Flat Rate" conspicuous to a passenger upon entering the taxicab, and outlining the flat rates to be charged. Temporary taxicab drivers shall comply with 4.15.120 outlining rates.
- B. A top light identifying it as a taxicab except for temporary taxicab drivers.
- C. The company name and telephone number where service can be requested displayed on the exterior of the vehicle except for temporary taxicab drivers.

- D. A mobile communication device with a hands-free accessory or state of the art taxi radio on a clear coordinated taxicab radio frequency for customer comfort and rapid dispatching of calls for service except for temporary taxicab drivers.
- E. The driver's approved city taxicab driver permit or temporary taxicab driver permit conspicuously displayed inside the vehicle where it can be easily viewed by a passenger.

#### **4.15.120 Rates**

- A. Except for taxicabs charging flat rates, a taximeter in accurate operating condition with a lighted face which can be read at all times by the customer. Taxicabs charging flat rates must be equipped with a sign complying with 4.15.120 stating "Flat Rate" conspicuous to a passenger upon entering the taxicab, and outlining the flat rates to be charged. Temporary taxicab drivers shall comply with 4.15.120 outlining rates.
- B. The rate schedule must be posted in each taxicab in a place where passengers may readily see the schedule. No taxicab may charge more than the posted rate.

#### **4.15.130 Complaints**

Taxicab endorsement holders and temporary taxicab drivers shall maintain a record of all complaints received in writing or by telephone and shall keep posted in a conspicuous place in the passenger compartment of each taxicab a statement setting forth the address and telephone number of the owners to which complaints should be directed, and a notice that a record of all complaints shall be open to inspection and review by the city at any time on its request.

#### **4.15.140 Reports to the Police Chief**

- A. Every taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder shall report, within 48 hours, to the Police Chief, as soon as any of the following events occur:
  1. The arrest or conviction for any criminal offense of any officer or principal managing employee of the taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder involving the operation of the taxicab business;
  2. Any taxicab accident required to be reported to the state involving a vehicle driven for the taxicab endorsement holder or by a temporary taxicab driver;
  3. The filing of a lawsuit against or on behalf of the taxicab endorsement holder related to the operation of the taxicab company;
  4. The filing of a lawsuit against or on behalf of a temporary taxicab driver related to the operation of a temporary taxicab service;

5. The initiation of bankruptcy proceedings or corporate or partnership dissolution by the taxicab company; (Why would we need this information?)
  6. Lapse, cancellation, or reduction of coverage of any insurance policy the Police Chief relied on in issuing a taxicab endorsement, taxicab driver permit, temporary taxicab driver permit or renewal of the taxicab endorsement or driver permit.
  7. Any information required to be disclosed by subsection (B) of this section.
- B. Every taxicab driver and temporary taxicab driver shall report to the Police Chief, and in the case of a taxicab driver to the taxicab endorsement holder for which he or she drives, the occurrence of the following:
1. Any arrest, charge, or conviction of the taxicab driver or temporary taxicab driver for any criminal offense, or any traffic violation, that occurs during, or arises out of, the taxicab driver's or temporary taxicab driver's operation of a taxicab;
  2. Any arrest, charge, or conviction of the taxicab driver or temporary taxicab driver for any criminal offense involving theft, robbery, burglary, assault, sex crimes, drugs, prostitution, traffic crimes, or any related offense;
  3. Any vehicle accident required to be reported to the state involving any taxicab operated by the taxicab driver or temporary taxicab driver;
  4. Any restriction, suspension, or revocation of the taxicab, or temporary taxicab, driver's motor vehicle driver's license;

#### **4.15.150 Insurance Requirements**

- A. No person may drive or operate, or cause to be driven or operated, any taxicab in the city unless the endorsement holder or temporary taxi driver permit holder has on file with the Police Chief a certificate of insurance written by a responsible and solvent insurance carrier authorized to write insurance policies in Oregon. The certificate of insurance must be issued to, or for the benefit of, the taxicab endorsement holder or temporary taxicab driver permit holder, and be a commercial auto liability policy which is in full force and effect, and designating in such policy, the taxicab(s) which may be driven or operated under this Chapter. These requirements are intended to insure the vehicle and its operation by the driver.
- B. The taxicab liability insurance policy shall insure the taxicab endorsement holder, temporary taxicab permit holder, and any other person using or responsible for the use of any such taxicab against loss from the liability imposed upon such operation of such taxicab by law for injury to, or death of, any person, or damage to property growing out of the maintenance, operation or ownership of any taxicab, in the amount of \$1,000,000 combined single limit for bodily injury and property damage.

- C. The City requires notice of cancellation of the required insurance policies, and taxicab endorsements or temporary driver permits will be terminated immediately upon the City's receipt of a cancellation of insurance.
- D. The taxicab endorsement holder and the temporary taxicab permit holder shall provide the city with a certificate of insurance naming the city as an additional insured.
- E. The insurance minimum limits required by subsection (B) of this section apply when the city issues a new license, reissues, or renews a license or permit.

#### **4.15.160 Indemnification**

- A. Any recipient of a taxicab endorsement shall agree to pay all damages and penalties that the city may be legally be required to pay as a result of granting a taxicab endorsement and shall agree to defend and indemnify the city against all claims resulting from the granting of such an endorsement. These damages or penalties shall include, but not be limited to, damage arising out of the operation or maintenance of a taxicab as authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Chapter.
- B. The taxicab endorsement holder shall pay and, by its application and the granting of a taxicab endorsement to the business license, specifically agrees that it will pay all necessary and reasonable expenses incurred by the city in defending itself against all damages and penalties mentioned in subsection (A) of this section, including, but not limited to, reasonable attorney fees.

#### **4.15.170 Violation - Enforcement**

- A. A violation of any provision of this Chapter, including but not limited to operating a taxicab service from points originating within the city without holding a valid, approved taxicab endorsement, or operating a vehicle without a valid, approved driver permit, or temporary taxi driver permit shall be enforced under Chapter 1.50.010 of the Newport Municipal Code.
- B. Operating a taxi in violation of this Chapter is declared detrimental to the public health and safety and a nuisance as authorized by Chapter 8.10 of the Newport Municipal Code. As an alternative to any remedy provided for enforcement, the city may use the abatement procedures of Chapter 8.10 or institute injunctive or other appropriate proceedings to temporarily or permanently enjoin the operation of a taxi.
- C. Each day's violation of a provision of this Chapter constitutes a separate offense.

Formatting Note: New language is shown with a double underline. Deleted language is in ~~strikeout~~. Staff comments are shown in *italics*.

#### 4.05.010 PURPOSE AND SCOPE

The purpose of this Chapter is to provide revenue for municipal purposes and to provide for the health, safety, and welfare of the citizens of Newport through the regulation of businesses, occupations, and trades. A business need not be located within the city in order to be subject to the provisions of this Chapter. This Chapter serves the public interest by mandating that business will be carried on in compliance with applicable laws and in a manner that protects the public's health, safety, and welfare. The licensing provisions of this Chapter are enacted pursuant to the City Charter, Section 4, and the city's home rule authority as provided in the Oregon Constitution, Article XI, Section 2.

The business license fee shall be in addition to, and not in lieu of, any other license or permit fee, charge, or tax required under any other Municipal Code section or city ordinance. The business license required by this Chapter shall not be construed to constitute a permit to engage in any activity prohibited by law nor as a waiver of any other regulatory or license requirement imposed by the city or by federal, state, or local law.

#### 4.05.015 DEFINITIONS

Business - Any for-profit or not-for-profit enterprise, establishment, store, shop, activity, profession, or undertaking ~~doing business~~ of any nature operating within the city, whether conducted directly, indirectly, or cooperatively, including the rental of real property as defined in this ordinance, carried on for the purpose of generating income. ~~“Business” does not include the on-premises sale of used household goods by a person who resides on the premises (a yard or garage sale), so long as the sale is conducted no more than four days in any calendar year. As used in this ordinance, the phrase “doing business” means an act or series of acts performed in the course or pursuit of a business activity for more than twenty (20) hours in one calendar year.~~

*Staff: Eliminated reference to “doing business” as it is inappropriate to include it in a definition of the same term. Most definitions for business hinge upon the receipt of payment or income, so that has been worked into the*

*definition. Language addressing activities that do not qualify as a business have been moved to a new Exemptions section.*

**City Manager** - The City Manager of the City of Newport or the City Manager's designee.

**Consignment Store Merchants** - Persons who own goods and enter into an agreement with a consignee/seller to sell or market those goods. Consignment store merchants occupy space within a fixed facility or building which is owned or operated by consignee/seller for the purpose of displaying and selling such goods.

**Employee** - Any person who works within the city in the service of another person (the employer) and whose work performance details are controlled by the employer. This definition includes contractors and persons volunteering their time to an employer. Employees may be part-time or full-time and the number of employees will be measured using a full-time equivalent computation, in accordance with any applicable city rules.

*Staff: Language that picks up contractors and volunteers as employees has been added at the request of the work group for clarification purposes.*

**Endorsement** - Standards established by the city which a business license applicant must satisfy or make progress toward satisfying prior to the city issuing a business license. Any city-approved endorsements will be clearly noted on the business license.

**Not-for-Profit Entity** - Any entity organized and operated exclusively for a religious, charitable, humanitarian, or educational purpose and for whom the United States or the State of Oregon has granted an exemption from the payment of income tax on that basis.

**Person** - Any and all natural and legal persons, including individuals or public or private corporations, firms, partnerships, associations, organizations, syndicates, joint ventures, societies, or any other group or entity acting as a unit of individuals.

**Rental of Real Property** - The rental or offering for rent of real property. Rental of real property includes, but is not limited to, the following types of properties rented or offered for rent:

hotel or motel rooms, automobile or tourist courts, boarding houses, bed and breakfast rooms, mobile homes or trailer parks, residential or vacation homes, multi-family dwelling units, moorage units, and commercial properties. ~~Notwithstanding anything to the contrary above, an owner's rental of no more than one residential dwelling unit for thirty (30) days or more shall not constitute the rental of real property.~~

*Staff: Rental of one dwelling unit for 30 days or more has been moved to the exemption section.*

Special Event Vendors - A person engaged in selling or offering for sale any food, beverage, merchandise, or service within the city during a special event for which the event organizer has obtained a valid business license. Special event vendors must possess all other necessary city, county, and state permits and authorizations.

#### 4.05.020 BUSINESS LICENSE REQUIRED

~~No person shall do business within the city without a current, valid city business license, unless exempt from this ordinance. No person shall do business within the city as an employee, agent, or representative of another person unless the owner, principal, employee, agent, or representative is exempt or has a current, valid city license for that business, no matter where the principal offices of that business are situated.~~

*Staff: The language listed is currently found in the exemptions and fees section of the code. It is not relevant to that section and could be overlooked as a result. This type of language is more typically placed as a lead paragraph to a code, as depicted here.*

#### 4.05.025 EXEMPTIONS

~~Persons engaged in the following activities are exempt from the business licensing requirements of this Chapter:~~

- ~~A. On-premises sale of used household goods by a person who resides on the premises (a yard or garage sale), so long as the sale is conducted no more than six days in any calendar year.~~

- B. An act or series of acts performed in the course or pursuit of a single business activity for not more than twenty (20) hours in one calendar year.
- C. Special Event Vendor and Consignment Store Merchants, as long as the following requirements are met:
  - 1. The organizer of the special event or the owner/operator of the consignment store obtains a valid business license and provides the city with a list of all special event vendors or consignment store merchants. Such list must be updated by the organizer of the special event or the owner/operator of the consignment store upon any significant change in the number or type of special event vendors or consignment store merchants;
  - 2. The special event vendor or consignment store owner/operator obtains all other necessary city, county, or state permits or licenses and complies with all applicable city, county, or state laws and regulations.
- D. Persons engaged in delivery of goods inside the city from points outside the city (e.g. logging trucks, freight vehicles, and commercial fishing vessels).
- E. Any city, county, state agency, special district, school district, or other government entity.
- F. A person's rental of no more than one residential dwelling unit for thirty (30) consecutive days or more.
- G. A person's rental of a dwelling unit, where rental of the unit is required to be managed by a single entity pursuant to a covenant or other binding legal instrument. In such cases, the owners of each dwelling unit shall be viewed as having an ownership interest in a common business and only the business (i.e. the entity managing the units) is required to obtain a business license.
- H. Any unincorporated business activity carried on by individuals under the age of 18.
- I. Any business operating under a city franchise.

J. Any person transacting and carrying on any business within the city which is exempt from such regulation by virtue of the Constitution or laws of the United States of America or the Constitution or laws of the State of Oregon.

*Staff: New section containing exemptions that had been built into definitions or were listed elsewhere in the code. Four new exemptions are proposed. Persons required to rent a dwelling unit through a management agency by virtue of a covenant or other binding legal instrument are exempt from obtaining a business license. This is consistent with our existing practice, as is the proposed exemption for businesses operating under a city franchise agreement. An exemption is also added for individuals operating a business under the age of 18 (e.g. babysitting) as that is not currently; nor, has it ever been treated as a business by the City. Lastly, an acknowledgement has been added that the City will not require a business license if it is barred from doing so under state or federal law.*

**4.05.020030 FEES; EXEMPTIONS**

A. This ordinance hereby establishes a Business Application Fee and a Business License Annual Fee. :

~~1. Business Application Fee; and~~

~~2. Business License Annual Fee.~~

~~A. All persons applying for a new business license shall pay both the business application fee and the business license annual fee, unless otherwise exempt as provided in Section E. below. Persons renewing an existing, non-expired business license shall pay only the business license annual fee, unless otherwise exempt as provided in Section E. below.~~

B. The business application fee amount shall be charged when a new or expired business license application is processed and shall be limited to recovering the Finance Department's administrative cost of processing the application. The business application fee is non-refundable and shall be set from time to time by resolution of the City Council. Persons holding ~~expired-delinquent~~ business licenses will be charged a new business application fee to re-apply.

C. The business license annual fee shall be charged when a new business license application is processed or a person renews an existing, non-expired business license. ~~The amount of the business license annual fee shall annually at a rate to be determined by resolution of the City Council, such rate being either a flat rate for all businesses or a progressive rate based on number of employees.~~

~~D. No person shall do business within the city without a current, valid city business license, unless exempt from this ordinance. No person shall do business within the city as an employee, agent, or representative of another person unless the owner, principal, employee, agent, or representative is exempt or has a current, valid city license for that business, no matter where the principal offices of that business are situated.~~

~~E. Exemptions from the Business License Annual Fee.~~

~~F.D. 1. Exempt persons listed in this subsection~~Not-for-Profit Entities shall not be charged a business license annual fee. ~~Such entities~~ Persons listed in this subsection and doing business within the city must still apply for a business license, on the forms provided by the city and must still pay the business application fee, and annually renew the license at no cost, unless specifically exempted from paying the business application fee below.

~~2. The following persons shall not be charged the business license annual fee:~~

~~a. A not for-profit entity, as defined in this ordinance.~~

~~b. A special event vendor, as defined by this ordinance.~~

~~c. A consignment store merchant, as defined in this ordinance.~~

~~dE.~~ Persons expressly exempted from paying a city business license application fee or business license annual fee under any other lawful provision of federal, state, or city law shall not be subject to such fees. City shall document claimed exemptions, and may require provided that the person claiming the exemption shall show provide proof of such exemption satisfactory to the City Attorney.

~~e. Persons engaged in delivery of goods inside the city from points outside the city.~~

~~f. Any city, county, state agency, special district, school district, or other government entity.~~

~~F. Special Event Vendor and Consignment Store Merchant Exemptions. In addition to any other exemption provided in this ordinance, special event vendors and consignment store merchants shall be exempt from all requirements of this ordinance, including but not limited to, the obligation to register, the obligation to pay a business application fee, the obligation to obtain a valid business license, and the obligation to pay the business license annual fee, as long as the following requirements are met:~~

~~1. The organizer of the special event or the owner/operator of the consignment store obtains a valid business license which lists all special event vendors or consignment store merchants. Such list must be updated by the organizer of the special event or the owner/operator of the consignment store upon any significant change in the number or type of special event vendors or consignment store merchants;~~

~~2. The special event vendor or consignment store owner/operator obtains all other necessary city, county, or state permits or licenses and complies with all applicable city, county, or state laws and regulations.~~

*Staff: The clause stating that business licenses are required has been moved to a lead paragraph. Applicability of the business license application fee and the business license annual fee has been clarified. Exemptions have been moved and consolidated into a new section. A requirement has been added that Not-for-Profit Entities renew business license applications at no cost. New language also requires the city document exemptions and requires City Attorney review of the exemption claim upon request.*

#### **4.05.025035 MULTIPLE LOCATIONS OR BUSINESSES**

A. A person who does ~~the same or substantially similar~~ business from more than one physical location, ~~need only obtain one business license and under a different business name or as a different business entity at the separate~~

~~location, shall obtain a separate business license for each such location, name and entity. A person who does business as more than one business entity or whose businesses are not substantially similar in nature shall obtain separate business licenses and shall pay any applicable business license fees for each such entity or business.~~

B. An owner of real property for rent who rents or offers for rent more than one dwelling unit of real property need only obtain one business license.

C. In determining whether different business entities or activities should be categorized as only one business or as multiple businesses for the purposes of this ordinance, the City Manager shall consider the normal and ordinary customs and usages of business, including but not limited to: consideration of how the businesses are registered with other governmental agencies, such as the Oregon Secretary of State and the Internal Revenue Services.

*Staff: This section has been amended to add clear and objective standards for determining when a business that is operated at multiple locations requires a business license for each location.*

#### **4.05.030040 APPLICATION**

A. All persons doing business within the city shall, on a form provided by the city, apply for and maintain a business license unless exempt under this ordinance.

B. The application shall show: the corporate, trade, or registered name of the business; the complete address(es), email address(es), and telephone number(s) of the principal office of the business and any other locations or addresses within the city; the location or address of any real property offered for rent, including the number of dwelling units; the name(s), email address(es), and telephone number(s) of the owner(s) or principal(s); the number of employees; the state of incorporation if the business is a corporation; and completed application materials for any applicable endorsements. On the basis of that application, the city shall compute the business license annual fee for that license according to the schedule of fees that the City Council shall establish from time to time by resolution. The applicant shall warrant by

his/her signature that all representations made on the application form are the truth to the best of his/her knowledge. Any misrepresentations on the application shall constitute a violation of this ordinance.

- C. All applications shall be submitted before the person first does business in the city. A license shall be valid from the date of issuance until June 30<sup>th</sup> of the next calendar year. Applications received after December 31 will be charged one-half of the business license annual fee, as determined by City Council resolution.
- D. Upon receipt of a signed and completed application for a business license, the city shall inform the applicant of any business application fees and business license annual fees due and process the application within 30 days or notify the applicant in writing of the delay as to why the application cannot be processed within this timeframe and any steps that the applicant must take before the city will approve the application. Such fees shall be due and payable on the date the application is submitted or by July 1st for non-expired renewals. The city will endeavor to process all applications and renewals within the estimated time 30 days of the date they are received.

*Staff: Changes in this section articulate how the city is to communicate with applicants when there are issues that prevent a timely review and issuance of a business license.*

#### **4.05.035045**                      **ISSUANCE; DISPLAY; TRANSFER**

- A. A. The city shall issue a written receipt when a business license is approved—applied for and any applicable business application fees and business license fees are paid in full. The receipt shall constitute—serve as a temporary business license for an application that does not include an endorsement, and shall be effective for a period of forty-five (45) days while the city reviews the business license application. The temporary business license and shall be public notice that the person named thereon is licensed to do business in the city.
- B. A business license will be issued by the city to replace the temporary business license once the business license application has been approved by the City Manager, following referral to the Community Development, Public Works, Fire, and Police Departments.

C. Upon receipt of a business license, A-a person who is required by this ordinance to have a business license shall cause the receipt-license to be prominently posted in a place available to the public at the principal location or office of the business for which the license is issued. If the principal location or office of the business is not located within the city, the business' employee, agent or representative must possess a copy of the license when doing business within the city. For business licenses issued to persons who offer real property for rent, the license need not be posted, but shall be made available upon city's request.

A.D. Issuance of a business license, temporary or otherwise, shall not preclude enforcement against the licensee of any city ordinance, state statute, federal law or any other applicable law.

BE. A business license may be transferred to another party if: 1) the other party becomes the owner of the business; 2) no other significant change in the nature of the business has occurred; 3) if the existing business license contains no endorsements; and 4) if the new owner contacts the city to amend the business license application to accurately reflect the new ownership and any other new information. No other transfer or assignment of any license issued under this chapter shall be valid or permitted. Upon a significant change of the nature of the business, a new business license is required.

F. A duplicate license shall be issued upon application and payment of a fee to replace the license previously issued which was lost or destroyed. The fee for a duplicate license shall be set by Council resolution.

*Staff: New language creates a temporary business license that is issued at the time an application is submitted and payment is made to the city. The 45 days affords the city time to review the application and issue the business license before the temporary authorization expires. This addresses issues where businesses such as contractors cannot wait a month or longer before beginning work. Language requiring referral to City Departments is included, which is consistent with current practice. Issuing a business license either before or without reviewing a business license application is something that a number of jurisdictions chose to do for the*

*convenience of business owners. To protect themselves though, they include language stating that issuance of the business license does not constitute enforcement of city ordinances, state statutes, or other laws. That may come about later as part of the business license review or at another point in time when it is discovered that there is a conflict. Appropriate language has been added.*

#### **4.05.040050 DISCLOSURE; DELINQUENCY**

- A. Persons required to possess a business license shall, upon the city's request, make available all records, accounts and documents of every nature and in whatever media format which may tend to prove or disprove the applicant's statements on the business license application.
  
- B. A business license fee not paid in full within 30 days after it is due is delinquent and the city may avail itself of any and all remedies available to collect the fee, including but not limited to referring the delinquency to a collection agency and citing the person for a violation of the Newport Municipal Code. In addition, a delinquency charge may be imposed in an amount established by Council resolution. ~~delinquency charge of ten (10) percent of the business license fee due may be added to the fee that is otherwise due. This delinquency charge shall be charged for each successive 30-day period, or portion thereof, for which any amount is due and owing and remains unpaid, including any delinquency charges already imposed, up to a maximum penalty of twenty (20) percent of the license fee.~~

*Staff: City imposes most fees by resolution and a delinquency charge should be handled in the same manner. That way all pertinent charges will be located in the same document (as opposed to having to shuffle between the ordinance and resolution).*

#### **4.05.045055 ADMINISTRATION**

- A. The City Manager is responsible for the administration of this Chapter and ~~will~~ may adopt reasonable policies, procedures, administrative rules, or regulations to carry out the purpose and intent of this Chapter and to ensure that any health or safety issues related to the applicant's business are identified prior to the city issuing a business license. The City Manager shall provide the City Council

with a report of any administrative rule adoptions or amendments regarding this ordinance. The city may initiate the process for remediating any health or safety issues at any time, whether before or after the issuance of the business license.

~~B. Violations of this Chapter or of any rules and regulations adopted by the City Manager pursuant to this Chapter shall be subject to the penalties provided within this Chapter. No person shall willfully make any false or misleading statements to the City Manager regarding information relevant to the issuance of a business license.~~

*Staff: These revisions eliminate the requirement that administrative rules be prepared, but leave open the possibility should the City Manager determine that they are needed for the proper administration of the ordinance. The last paragraph is not needed, in part because it is inappropriate to subject future, and as yet unwritten, administrative policies to enforcement and because adequate language addressing violations is contained in the section titled "Violations" below.*

#### **4.05.050060 DENIAL OR REVOCATION**

- A. A license issued under the provisions of this chapter may be denied or revoked by the City Manager, after notice as provided below, for any of the following causes:
1. Fraud, misrepresentation or false statement contained in the application for a license or failure to supply the requested application information;
  2. A violation of this Chapter or of any city, county, state, or federal law or regulation;
  3. Conducting the licensed activity in an unlawful manner or in such a manner so as to constitute a breach of the peace, or to endanger or risk the health, safety, or general welfare of the public;
- B. Notice of denial or revocation of a license shall be given in writing to the applicant or licensee, setting forth specifically the grounds of denial or revocation. A notice of denial may be given to the applicant at any time during the application review process. A notice of revocation shall be mailed to the licensee at the licensee's last known address at least

ten (10) calendar days before the date of the revocation. The last known address is deemed to be the address provided to the city by the applicant on the business license application unless the applicant thereafter gives the city written notice of a different address.

C. An applicant shall be entitled to a refund of the business license annual fee in the event that their business license application is denied.

*Staff: language has been added to require that the business license application fee be refunded if the associated application is denied.*

#### **4.05.055065 VIOLATIONS**

- A. A violation of this Chapter shall constitute a civil violation of the laws of Newport and shall be prosecuted at the city's discretion by the filing of a complaint filed in municipal court or in an Oregon state court of proper jurisdiction. Any person found to have violated this Chapter shall be subject to a civil penalty ~~not to exceed five hundred dollars (\$500.00)~~ in an amount established by Council resolution.
- B. The conviction of any person for violation of this Chapter shall not act or relieve such person from the requirement to register a business or obtain a business license. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the city.
- C. In the event any provision of this chapter is violated by a firm or corporation, the officer, officers or individuals responsible for the violation shall be personally subject to the penalties imposed by this section.

*Staff: A fixed amount for penalties is being taken out in favor of the amount being established by resolution. A resolution will be prepared concurrent with the ordinance revisions. The term "personally" liable is used by other jurisdictions and staff should have an answer from the city attorney regarding the legality of the term by the September 8<sup>th</sup> Business License Work Group meeting.*

#### **4.05.070 EVIDENCE OF DOING BUSINESS**

In the trial or hearing on any alleged violation of this Chapter, evidence of advertisements by newspaper, radio, television,

internet or other medium or by signs displayed for public view, that a business activity was being conducted within the city, including expressly or implied offering to sell goods, services, or lodging to the public or any segment thereof, shall constitute prima facie evidence that the defendant was conducting a business activity within the city on the day or date during which such representations were made.

*Staff: Language of this nature has been requested by the Fire Marshall and is comparable to what the city adopted for vacation rentals. It addresses a known issue when cases are taken to municipal court. This type of language is used by other jurisdictions (e.g. Ashland and Medford).*

#### **4.05.069075 APPEAL**

- A. Any person aggrieved by the City Manager's (i) denial of a business license application; (ii) revocation of a business license; (iii) assessment of business application fee or business license annual fees; or (iv) application of any rules or regulations pertaining to this Chapter; shall have the right to appeal to the City Council. The applicant or licensee shall file with the City Council a written statement setting forth fully the grounds for the appeal within twenty (20) calendar days after either: (i) the day the notice of denial is issues or the day the of revocation is mailed; (ii) the day the disputed fees are assessed; or (iii) the day applicant or licensee alleges that the rules or regulations were misapplied.
- B. The City Council shall set a time and place for a hearing on the appeal within ~~twenty-three~~ (2030) calendar days after receiving the appeal. Notice of the appeal hearing shall be mailed to the applicant or licensee's last known address at least ten (10) calendar days prior to the hearing. During the hearing, the applicant or licensee shall have an opportunity to present in writing or orally the grounds for the appeal. The decision and order of the City Council on such appeal shall be final and conclusive.

*Staff: Additional time has been provided for scheduling an appeal hearing as requested by the Business License Work Group.*



## CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VIII.A  
Meeting Date: October 21, 2014

### Agenda Item:

## AUTHORIZATION TO INITIATE PROCEEDINGS TO WITHDRAW TERRITORY FROM THE SEAL ROCK WATER DISTRICT

### Background:

The City of Newport has been meeting with the Seal Rock Water District over the past year to discuss the withdrawal of land that is currently located in the city, served by city water, but remaining in the Seal Rock Water District. In 2007, the city entered into an intergovernmental agreement with the Seal Rock Water District which provided that the city provide water service to an area including much of South Beach. This agreement did not address the withdrawal of properties from the district. Following this agreement, the Seal Rock Water District funded major improvements to their system with a general obligation bond that was financed in 2011 and 2012 for the district. Please note that these improvements have no benefit to the properties located within the city's water service area. However, the property owners are being required to pay this debt. The district recognized that this is unfair. The amended agreement does not hold the city or property owners responsible for any debt issued after 2008 should those properties be withdrawn from the district. Please note that the city would be responsible for a pro rata share of any debt that existed prior to 2008 for these properties in accordance with the amended agreement.

ORS 222.520 authorizes the city to withdraw territory from a service district if it has been annexed to the city. The state statute requires that the governing body hold a public hearing, and following the public hearing, the city may, by ordinance, declare that properties located within the city be withdrawn from the district. Please note that this action is subject to a subsequent citizen-initiated referendum

### Recommended Action:

I recommend that the City Council consider the following motion:

I move to initiate the withdrawal of property from the Seal Rock Water District that is located in the city limits of the City of Newport in South Beach, and set the date, time, and place for the public hearing on this question for November 17, 2014, at 6 P.M., in the City Council Chambers, located at 169 SW Coast Highway.

### Fiscal Effects:

The agreement between the city and the Seal Rock Water District provides a mechanism for repayment of debt issued prior to 2008. If this withdrawal is effective July 2015, the

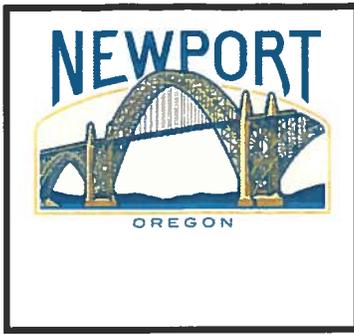
city will have an obligation to pay an amount of \$55,322.29 to address debt requirements for the property that is currently part of the city that would be withdrawn from the Seal Rock Water District.

Alternatives:

The city has the option of not withdrawing the property as a block and leaving it to the individual property owners to file a petition to the Board of County Commissioners seeking a withdrawal pursuant to the provisions contained in ORS 198. This would create a piecemeal process that would be more convoluted to the district, the city, and Lincoln County.



Respectfully Submitted,  
Spencer R. Nebel  
City Manager



Agenda Item # \_\_\_\_\_  
Meeting Date October 20, 2014

**CITY COUNCIL/URBAN RENEWAL  
AGENCY AGENDA ITEM SUMMARY**  
City of Newport, Oregon

Issue/Agenda Title Initiate Proceedings to Withdraw Territory from the Seal Rock Water District

Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval: \_\_\_\_\_

**ISSUE BEFORE THE COUNCIL:** Consideration of whether or not it is in the public interest for the City of Newport to withdraw territory from the Seal Rock Water District that is situated within the Newport city limits in South Beach. This step was envisioned as part of Amendment No. 1 to the Urban Service Agreement between the Seal Rock Water District and City of Newport, adopted May 8, 2014.

**STAFF RECOMMENDATION:** Staff recommends the Council initiate the withdrawal proceedings.

**PROPOSED MOTION:** I move that the City Council initiate the withdrawal of territory from the Seal Rock Water District that is located within the Newport city limits in South Beach, and set the date, time, and place for a public hearing on the question of such withdrawal to be November 17, 2014 at 6:00 pm in the City Hall Council Chambers at 169 SW Coast Highway.

**KEY FACTS AND INFORMATION SUMMARY:** The City of Newport entered into an Intergovernmental Agreement (IGA) with the Seal Rock Water District in 2007 that expanded the City’s water service area to include much of South Beach. This was done in recognition of the fact that the City is better positioned to provide water service to developing properties in the area. Unfortunately, that agreement did not address the withdrawal of properties from the District. After the City took over water service responsibilities within the City Service Area (CSA) in 2008, the District secured approval of a General Obligation Bond for improvements to its water system. These bonds were drawn upon in 2011 and 2012 to finance improvements to the District’s system that do not benefit properties within the CSA. Nonetheless, because properties within the CSA remain within the District, and are subject to District property taxes, they are paying for their proportionate share of these bond issues. The City and District, recognizing that this is unfair, adopted Amendment No. 1 to the IGA to indicate that it is the District and City’s intent that when properties within the CSA are withdrawn from the District they will only be subject to General Obligation Bond debt incurred as of January 1, 2008, the date the City began providing water service within the CSA.

Oregon Revised Statute (ORS) 222.520 authorizes cities to withdraw territory from a service district once it has been annexed. The process that must be followed is outlined in ORS 222.524. It requires that the governing body of a city fix a date, time, and place for a public hearing to hear any objections to the withdrawal and determine if such withdrawal is for the best interest of the city. After the hearing, the governing body may by ordinance declare the annexed territory to be withdrawn from the district. Such action is subject to referendum. Notice of the hearing must be published in a newspaper once a week, for two consecutive weeks prior to the date of the hearing.

**OTHER ALTERNATIVES CONSIDERED:** Not withdrawing the property or leaving it to individual property owners to file a petition to the Board of County Commissioners seeking a withdrawal pursuant to provisions contained in ORS Chapter 198. Leaving the properties in the District means that those landowners will

have to continue to pay taxes for services that they do not receive, which is unfair. While the petition process outlined in ORS Chapter 198 is a viable alternative, and the only one for those properties that are inside the CSA and outside the city limits, it is burdensome because each owner must file. Under ORS Chapter 222, the City can pursue the withdrawal for all affected properties within its corporate limits (approx. 136 accounts) making it a more streamlined process.

**CITY COUNCIL GOALS:** There are no Council goals directly related to this agenda item.

**ATTACHMENT LIST:**

- Amendment No. 1 to the Urban Service Area Agreement, dated May 2014
- ORS 222.510 through 222.580, Annexation of Public Service Districts
- Map of the affected properties

**FISCAL NOTES:** If the Council approves the withdrawal then the City will be responsible for the subject properties proportional share of General Obligation Bond debt incurred prior to January 1, 2008. That amount is estimated to be \$55,322.49 assuming the withdrawal is effective July 1, 2015. This payment would be made from the Water Fund, which has sufficient resources to cover the expense.

AMENDMENT NO. 1 TO THE  
INTERGOVERNMENTAL URBAN SERVICE AGREEMENT  
BETWEEN THE SEAL ROCK WATER DISTRICT AND  
THE CITY OF NEWPORT

This Amendment No. 1 is made to the Intergovernmental Urban Service Agreement between the Seal Rock Water District (District) and the City of Newport, an Oregon municipal corporation (City), dated November 4, 2007 (the Agreement).

RECITALS

- A. Section 1 of the Agreement states that the "City shall provide water service within the area shown on Exhibit A as the City Service Area ('CSA')." The referenced Exhibit A was not attached to the Agreement so the official location of the CSA boundary is unclear under the Agreement's current terms. City and District desire to clarify the location of the CSA by adopting a new legal description and boundary map.
- B. Section 2 of the Agreement prohibits City from providing water service to areas within District that are outside of the CSA without District approval, but does not contain reciprocal language. City and District desire to amend the Agreement to allow District to provide water service to properties within the CSA, subject to City approval.
- C. City began providing water service to the CSA effective January 1, 2008, and District ceased providing service within the CSA as of that date, except as noted in the Agreement.
- D. In November of 2010, District completed a Water System Master Plan. Lands within the CSA were not included in that Plan.
- E. Upon completing the Water System Master Plan, District successfully secured passage of a General Obligation (GO) Bond to fund projects identified in the Plan and borrowed construction funds in 2011 and 2012 for that purpose. In 2013, the District refinanced a GO Bond issued in 2007.
- F. District retires GO Bond debt with property tax revenues. Properties within the CSA remain within District's boundaries and are subject to a proportionate share of the bond debt even though they receive no benefit from the 2011 and 2012 GO Bond funds.
- G. Section 4 of the Agreement states that "The CSA shall remain subject to bonded indebtedness until withdrawn from the District and the bonded indebtedness is satisfied as provided by law." City and District recognize the inequity inherent in this provision, as it relates to the 2011 and 2012 bonds, and desire to amend the

Agreement to clarify that when properties within the CSA are withdrawn from the District they will only be subject to GO Bond debt incurred as of January 1, 2008, the date the City began providing water service within the CSA. Such debt is limited to a GO Bond issued in 2007, which was refinanced in 2013 ("2007 GO Bond").

- H. Section 5 of the Agreement transferred District real and personal property within the CSA to City, but failed to identify how those real property interests were to be recorded. The parties wish to establish how that transfer will be documented as of record.

#### TERMS OF AMENDMENT

- 1. Section 1 of the Agreement is hereby amended as follows:

"City Service Area. City shall provide water service within the area identified in the legal description dated April 16, 2014, and service boundary map dated April 16, 2014, as the City Service Area (CSA), both prepared by Pariani Land Surveying and attached as Exhibits A and B, respectively."

- 2. Section 2 of the Agreement is hereby amended as follows:

"District Service. District will provide service to all properties within the District, outside of the CSA. City agrees to not provide water service to areas within the District that are neither part of the CSA nor owned by the City, even if that area is annexed to the City, without the prior written consent of the District. The parties agree that District will continue to provide extraterritorial service to the Airport until such time as the City elects to provide service to the Airport, and that the maximum amount charged by the District for service to the Airport will be the commercial in-District rate. District agrees to not provide water service to other areas within the CSA without the prior written consent of the City."

- 3. The last two sentences of Section 4 of this Agreement are hereby amended to read as follows:

"Properties within the CSA shall remain subject to bonded indebtedness until withdrawn from the District. District will not object to withdrawal of any property from the District that lies within the CSA, and will fully cooperate with attempting to relieve properties from taxation as provided in this paragraph. Withdrawal by the City of annexed CSA properties shall be accomplished by ordinance, pursuant to ORS 222.520, 222.465, and 222.524. Withdrawal of non-annexed CSA properties shall be accomplished by petition, pursuant to ORS 198.870, et seq.

Upon withdrawal: 1) annexed properties shall be relieved of tax indebtedness as provided for in ORS 222.520 and 222.528; and 2) non-annexed properties shall be relieved from taxation as provided for in ORS 198.880. To the extent legally permissible and pursuant to ORS 198.882, the District shall also relieve all withdrawn CSA properties from taxation for the properties' proportionate share of

bonded or other indebtedness incurred after January 1, 2008, excluding the refinanced 2007 GO Bond.”

4. Section 5 of this Agreement is hereby amended to insert the following as the second sentence of that section; the existing provisions of Section 5 are not replaced or amended, but will remain in full force and effect:

“All real property transfers from the District to the City shall be documented by an Assignment of Easements, in the form attached as Exhibit C, which shall be recorded upon execution.”

5. Except as expressly amended above, all terms and conditions of the Agreement shall remain in full force and effect.

CITY OF NEWPORT

SEAL ROCK WATER DISTRICT

  
\_\_\_\_\_  
Mayor

Date: April 22, 2014

ATTEST:

  
\_\_\_\_\_  
City Recorder

  
\_\_\_\_\_  
Board President

Date: 8 May 2014

  
\_\_\_\_\_  
District Secretary

**Service Boundary Description –**

Beginning at the projected intersection of the northerly top of creek bank of Henderson Creek and the high tide line of the Pacific Ocean shoreline, located in Section 30, Township 11 South, Range 11 West, W.M., Lincoln County, Oregon; thence northerly along the said high tide line to the northerly line of the Yaquina Bay South jetty; thence continuing along the said South jetty, generally northerly, easterly and southerly through sections 30, 19, 11, 18, 17, 8, 16 and 21, Township 11 South, Range 11 West, W. M. to the intersection with section line common to sections 21 and 28, Township 11 South, Range 11 West, W.M. thence westerly along said section line to the corner common to sections 20, 21, 28 and 29, Township 11 South, Range 11 West, W.M.; thence southerly along the line common to said sections 28 and 29, to the southeast corner of the NE1/4, NE1/4 section 29; thence westerly along the south line of said NE1/4, NE1/4 to the southwest corner thereof; thence southerly along the easterly line of the SW1/4, NE1/4 section 29 to a point on the quarter section line; thence southerly along the easterly line of the W1/2, SE1/4, section 29 to a point on the line common to section 29 and section 32; thence southerly along the easterly line of the W1/2, NE1/4 section 32; thence westerly along the southerly line of the West1/2, NE1/4 section 32 to the center of said section; thence southerly and westerly along the boundary of that property described in warranty deed recorded in Book 90, Page 522, Lincoln County Records, to a point on the line common to said section 32 and section 6, Township 12 South, Range 11 West, W.M.; thence through said section 6 southerly, westerly and northerly along the property described in warranty deed recorded in Book 97, Page 93, Lincoln County Records; thence through said section 32 and section 31, northerly and westerly along the boundary of that property described in said Book 90, Page 522 to the easterly line of the Oregon Coast Highway; thence northerly along said Coast Highway to the northerly top of creek bank of Henderson Creek thence westerly along the northerly top of creek bank of Henderson Creek to the projected intersection with the said high tide line and the point of beginning. (See the attached Exhibit B for the graphic depiction thereof).

**Excepting Therefrom –**

Beginning at the corner common to Sections 29, 30, 31 & 32, Township 11 South, Range 11 West, W.M., Lincoln County, Oregon; thence North 00°50'45" East, along the section

**(T11S, R11W, Sec 8, 16, 17, 19, 20, 29, 30, 31, 32)  
(T12S, R11W, Sec 6)**

Pariani Land Surveying-JRP  
April 16, 2014

line common to said Section 29 & 30, 1992.88 feet, more or less to the northeast corner of Lot 1 as shown on Lincoln County Survey number 7469; thence North 51°55'45" West, along the north line of said Lot 1, 102.03 feet to the southwest corner of said Lot 1 and also being a point of the easterly right of way line of Oregon Coast Highway; thence South 06°26'00" West, along said right of way line, 3.09 feet, to the True Point of Beginning; thence South 82°58'53" East, 13.88 feet; thence South 54°16'48" East, 55.09 feet; thence North 35°43'12" East, 13.78 feet; North 46°02'24" West, 8.27 feet; thence North 41°27'44" East, 25.65 feet; thence North 50°00'52" West, 73.88 feet; thence North 82°58'53" West, 15.27 feet, more or less to a point on the east line of said right of way; thence South 06°26'00" East, along said right of way line, 51.96 feet to the point of beginning.

(See the attached Exhibit C for the graphic depiction thereof).

The excepted area described contains 3432.5± square feet.

# Exhibit B

Located:  
 T11S, R11W, W.M.  
 and  
 T12S, R11W, W.M.  
 City of Newport  
 Lincoln County, Oregon

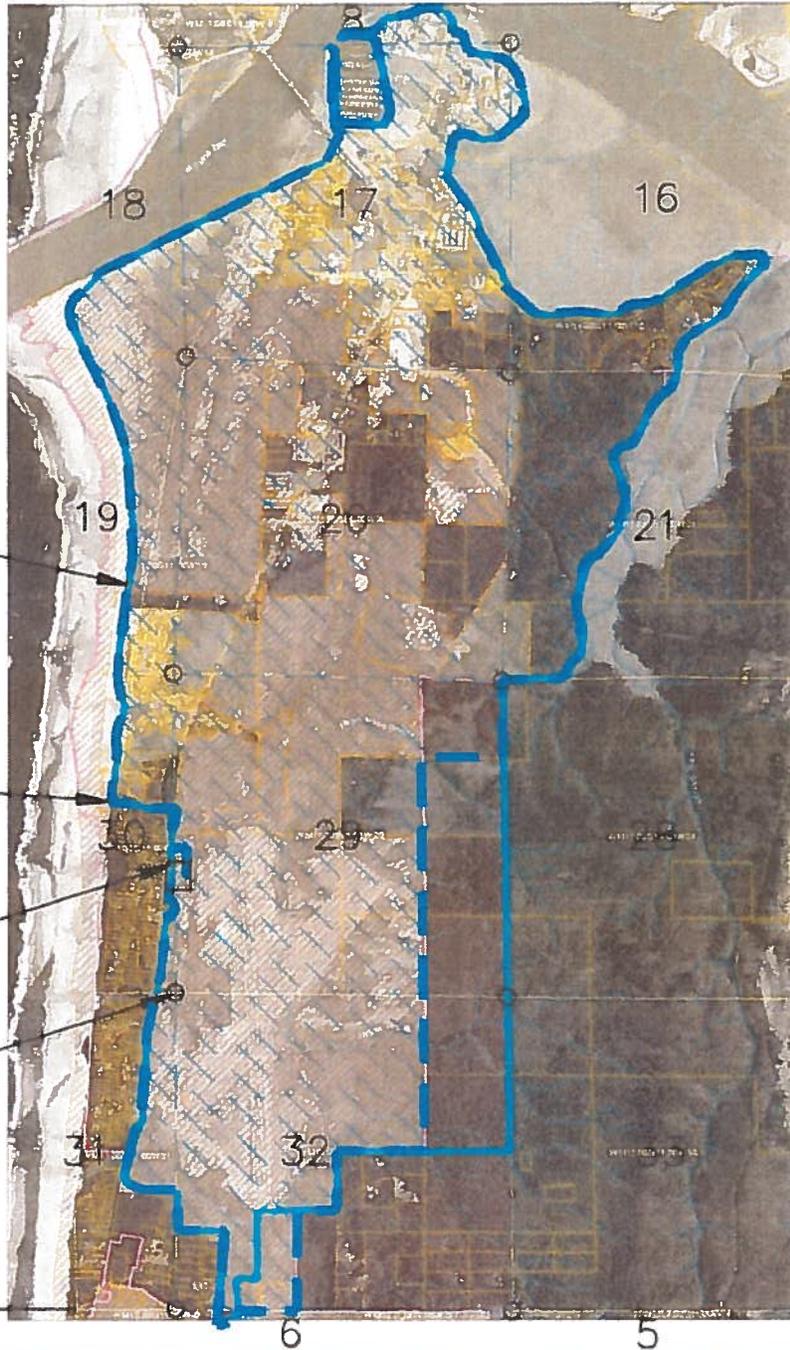
Service Boundary  
 (Hatched Area)

True Point  
 of Beginning

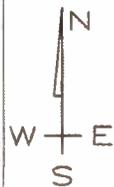
Exclusion Area—  
 See Exhibit C  
 for Details

Section Corners  
 (Typical)

T11S., R11W.  
 T12S., R11W.



Service Boundary Map



**REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR**

*John R. Pariani*  
 OREGON  
 July 13, 1999  
 JOHN R. PARIANI  
 #51382

Renews: December 31, 2014

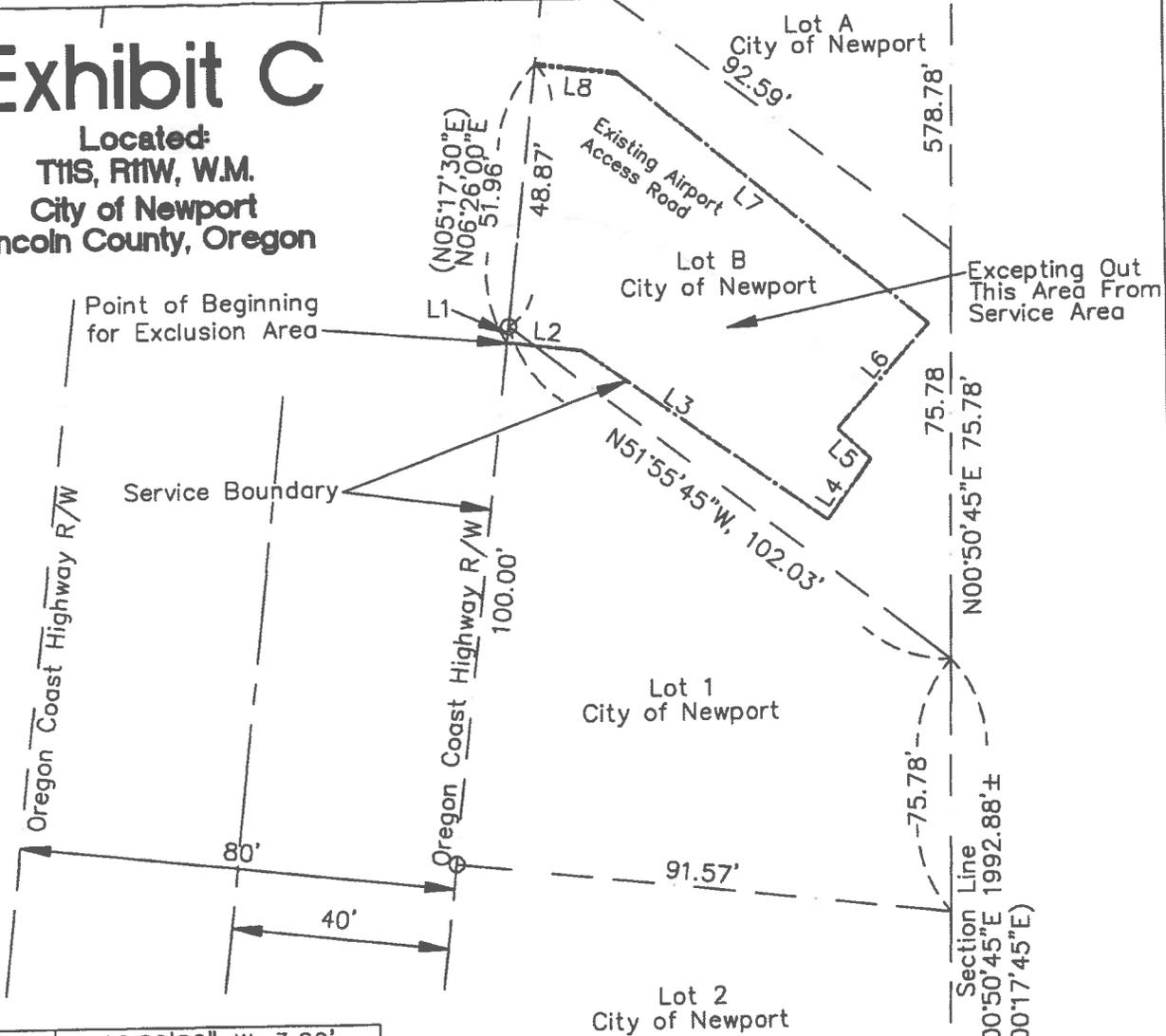
## Pariani Land Surveying

136 West Main Street  
 Eagle Point, Oregon  
 541-890-1131

Date:	Scale:	Job No.:	Sheet:
April 16, 2014	N.T.S.	2012-095	1 of 1

# Exhibit C

Located:  
T11S, R11W, W.M.  
City of Newport  
Lincoln County, Oregon



L1	S 06°26'00" W, 3.09'
L2	S 82°58'53" E, 13.88'
L3	S 54°16'48" E, 55.09'
L4	N 35°43'12" E, 13.78'
L5	N 46°02'24" W, 8.27'
L6	N 41°27'44" E, 25.65'
L7	N 50°00'52" W, 73.88'
L8	N 82°58'53" W, 15.27'

○ Found Monument per Lincoln Co. Survey No. 7469

30	29
31	32

REGISTERED PROFESSIONAL LAND SURVEYOR

*John R. Pariani*

OREGON  
July 13, 1999  
JOHN R. PARIANI  
#51382

Renews: December 31, 2014

Service Boundary Exclusion Map

## Pariani Land Surveying

136 West Main Street  
Eagle Point, Oregon  
541-890-1131

Date: April 16, 2014	Scale: 1" = 30'	Job No.: 2012-095	Sheet: 1 of 1
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## ANNEXATION OF PUBLIC SERVICE DISTRICTS

**222.510 Annexation of entire district; transfer of liabilities and functions to city; exceptions.**

(1) Whenever the entire area of a rural fire protection district, a water district, including a domestic water supply corporation, a park and recreation district, a highway lighting district, a county service district, a special road district, a road assessment district or a sanitary district or authority, lawfully organized and existing, becomes incorporated in or annexed to a city in accordance with law, the district is extinguished and the city shall, upon the effective date of the incorporation or annexation, succeed to all the assets and become charged with all the liabilities, obligations and functions of the district. The district officers shall forthwith deliver to the city officers the district assets and records. Uncollected taxes theretofore levied by the district become the property of the city and must be delivered to it by the county treasurer upon collection.

(2) Notwithstanding subsection (1) of this section, a rural fire protection district, a water district, including a domestic water supply corporation, a park and recreation district, a highway lighting district, a county service district, a special road district, a road assessment district or a sanitary district or authority, lawfully organized and existing, the entire area of which becomes incorporated in a city, may continue to provide services if the continuation is proposed by petitioners in a petition for incorporation that is subsequently approved by voters in an incorporation election. At any time after incorporation, a city may cause a district to be extinguished and succeed to all the assets and become charged with all the liabilities, obligations and functions of the district if:

(a) The governing body of the city holds a public hearing on the question of the extinguishment, hears objections to the extinguishment at the hearing, determines that the extinguishment is in the best interest of the city and adopts an ordinance extinguishing the district;

(b) After the hearing, the governing body of the city refers the ordinance extinguishing the district to the electors of the city; and

(c) The majority of all votes cast favors that the district be extinguished.

(3) For the public hearing required in subsection (2)(a) of this section, the governing body shall fix a date, time and place for the hearing and cause notice of the date, time, place and purpose of the hearing to be published once each week for two successive weeks prior to the date of the hearing in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period. [Amended by 1955 c.471 §1; 1963 c.347 §1; 1965 c.509 §1; 1967 c.365 §1; 1967 c.624 §16; 1969 c.78 §1; 1971 c.13 §5; 2007 c.420 §1; 2010 c.41 §1]

**222.520 Annexation of less than entire district; assumption of liabilities by city optional. (1)**

Whenever a part less than the entire area of a district named in ORS 222.510 becomes incorporated as or annexed to a city in accordance with law, the city may cause that part to be withdrawn from the district in the manner set forth in ORS 222.120 or at any time after such incorporation or annexation in the manner set forth in ORS 222.524. Until so withdrawn, the part of such a district incorporated or annexed into a city shall continue to be a part of the district.

(2) The part thus withdrawn shall not thereby be relieved from liabilities and indebtedness previously contracted by the district. For the purposes of paying such liabilities and indebtedness of the district, property in the part withdrawn shall continue to be subject to assessment and taxation uniformly with property in the area remaining in the district. The city of which it became a part shall, however, assume such obligations if the obligations assumed do not bring the total of the city's obligations above any applicable limitations prescribed by statute. When the city assumes such obligations it shall be liable to the district for one of the following, at the option of the city:

(a) The amount of taxes which otherwise would be extended each year therefor against the property in the part withdrawn; or

(b) Payment annually, as the bonds of the district that were outstanding on the effective date of the withdrawal mature, of the same proportion of such outstanding bonds, and the interest thereon, as the assessed valuation of the part withdrawn bears to the assessed valuation of the entire district on the effective date of the withdrawal. After the city agrees to make such payments under this subsection, neither the city nor the part withdrawn shall be charged by the district with any future liabilities, obligations or functions of the district. [Amended by 1955 c.471 §2; 1957 c.401 §1; 1963 c.347 §2; 1965 c.509 §2; 1967 c.624 §17; 1985 c.702 §13]

**222.524 Procedure for withdrawal of part of district from district.** (1) If as authorized by ORS 222.520 the governing body of the city elects to cause the withdrawal from a district named in ORS 222.510 of that part of such district theretofore incorporated in or annexed to the city, it shall hold a public hearing on the question of such withdrawal. At the hearing, the governing body of the city shall hear objections to the withdrawal and shall determine whether such withdrawal is for the best interest of the city.

(2) The governing body shall fix a date, time and place for the hearing and cause notice of the date, time, place and purpose of the hearing to be published once each week for two successive weeks prior to the date of the hearing in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

(3) After the hearing, the governing body of the city may by ordinance declare that the part of the district which was theretofore incorporated as or annexed to the city is withdrawn from the district.

(4) The ordinance referred to in subsection (3) of this section is subject to referendum.

(5) The city may withdraw from all of such districts at the same time in one proceeding under this section or may withdraw from each district in separate proceedings at different times.

(6) The public hearing and ordinance referred to in this section may be the same as the public hearing and ordinance in ORS 222.120. [1957 c.401 §3; 1963 c.347 §3; 1965 c.509 §3; 1985 c.702 §14]

**222.528 Territory withdrawn from district not liable for certain obligations.** The liabilities and indebtedness for which a part of a district named in ORS 222.510 remains liable, upon withdrawal by annexation or incorporation as provided in ORS 222.120 or 222.520, shall not include:

(1) Current operating expenses of the district beyond the fiscal year in which the withdrawal is effective.

(2) Special tax levies, bond indebtedness or debt service obligations approved in the district subsequent to the withdrawal.

(3) Any amount which is due beyond the fiscal year in which the withdrawal is effective by reason of a contract for services between the district and another district or municipality where the amount due varies in each fiscal year according to the assessed valuation of the district. [1957 c.573 §2; 1963 c.347 §4; 1965 c.509 §4; 1985 c.702 §15]

**222.530 Procedure for division of assets on withdrawal of part of district; arbitration and award.** (1) Within 90 days from the date of such withdrawal of part of a rural fire protection district, a highway lighting district, a special road district or a park and recreation district, the governing bodies of the city and the district shall agree upon an equitable division and disposal of the assets of the district. The plan of division of assets shall be arrived at after giving consideration to the assessed valuation of the whole district and the part of it withdrawn, the types of assets, and their location and intended use. However, the plan for division of assets of a rural fire protection district may in no case divide the assets so that the remaining part of the district would have a less favorable fire insurance grade classification, according to filings made pursuant to ORS 737.205, than that which the district had at the time of the withdrawal.

(2) The remainder of such district shall continue in existence as a district, but may dissolve in the manner provided in the applicable district statutes. After withdrawal, the services for the remaining part may be performed by the remainder of the district acting independently as such; or, such services may be performed by contract with the city, or by agreement of the city directly with the property owners of the remainder if the district determines upon dissolution. If dissolution is determined upon, and the city agrees to furnish service to the remainder of the district, all assets of the district shall become the property of the city.

(3) If an agreement pursuant to subsection (1) of this section cannot be arrived at within 90 days from the date of withdrawal, upon the request of any party in interest, the county court or board of county commissioners of the county in which the property is situated shall submit the matter to arbitration under ORS 36.600 to 36.740.

(4) Notice under ORS 36.685 need be made only upon parties in interest who have participated in the arbitration proceedings. An appeal from the award may be taken only to the circuit court for the county in which the property withdrawn is located, subject to further appeal as provided in ORS chapter 19. The functions of the district for the entire preexisting area thereof shall be continued by the district until the final determination of such agreement or arbitration.

(5) The governing bodies of the city and a rural fire protection district, a special road district or a park and recreation district, as the case may be, may enter into a binding agreement for the joint operation of the fire protection or park and recreation facilities of each that will be beneficial to and equitable for the inhabitants and property owners of each after the withdrawal of part of such districts. [Amended by 1955 c.471 §3; 1957 c.401 §4; 1963 c.347 §5; 1965 c.509 §5; 1969 c.690 §27; 1971 c.13 §6; 2003 c.598 §38]

**222.540 Procedure for division of installations on withdrawal of part of water district; appeal; joint operations.** (1) When a part of a water district, including a domestic water supply corporation, is withdrawn, the district shall, by action of its governing body, turn over to the city, of which the withdrawn area becomes a part, its water mains, service installations, structures, facilities, improvements and other property in the area withdrawn from the district that are not necessary for the operation of the remainder of the water control or water supply system of the district. All water mains, service installations, reservoirs, structures, facilities, improvements and other property that are necessary for the district to continue maintenance and operation of its water control or water supply system remain the property of the district, regardless of whether they are located within or without the city. If the city is not satisfied with the property division made by the district governing body, or if, within 90 days from the effective date of the withdrawal, the district governing body has failed to make a division, the city's governing body may request the county court or board of county commissioners of the county in which the property is situated to decide upon the division.

(2) After giving 10 days' notice and an opportunity to be heard to the district governing body, the court or board shall, in accordance with the standards of guidance provided in this section for the district governing board, divide the property.

(3) The decision of the county court or board of commissioners is binding upon all parties in interest, except that an appeal may be taken therefrom for abuse of discretion in arriving at the decision to the circuit court of the county in which the property withdrawn is located within 30 days from the announcement of the decision. The functions of the district must be continued in the entire preexisting area by the district until the final determination of the division of property.

(4) This section does not prevent the governing bodies of the city and the district from arriving at a binding agreement for a joint operation of the water or other facilities of each that will be beneficial to and equitable for the inhabitants and property owners of each after the withdrawal of part of the water district. [Amended by 1965 c.509 §6; 2007 c.420 §2]

**222.550 Withdrawal of major portion of water district; dissolution optional; transfer of property to city.** When the greater portion of a water district including a domestic water supply corporation or a water control district is thus withdrawn, measured by the comparative assessed valuations of the portion withdrawn and the portion remaining in the district, the remainder of the district may dissolve in the manner provided for water districts. If dissolution is determined upon and the city agrees to furnish water or other facilities theretofore provided by the water district to the remainder of the district and if the city agrees to assume the liabilities of the district, then all assets of the district become the property of the city. A city to which the major portion of a water district has been annexed may make such agreement notwithstanding any charter or statute limitation. [Amended by 1965 c.509 §7]

**222.560 Procedure for division of installations on withdrawal of part of sanitary district; appeal; joint operation.** (1) When a part of a sanitary district is thus withdrawn, the district shall, by action of its governing body, turn over to the city of which the withdrawn area becomes a part, its sewer lines, pumping stations, disposal and any other properties within the area withdrawn from the district that are not necessary for the operation of the remainder of the sewer system of the district. All outfall, trunk and collection lines, pumping stations, disposal and other properties which are necessary for the district to continue maintenance and operation of its sewer and disposal system shall remain the property of the district, regardless of whether they are located within or without the city. If the city is not satisfied with the division of property made by the district governing body, or if, within 90 days from the effective date of the withdrawal, the district governing body has failed to make a division, the city's governing body may request the county court or board of county commissioners of the county in which the property is situated to decide upon such a division.

(2) After giving 10 days' notice and an opportunity to be heard to the district governing body, the court or board shall, in accordance with the standards of guidance provided in this section for the district governing board, divide the property.

(3) The decision of the court or board shall be binding upon all parties in interest except that an appeal may be taken therefrom for abuse of discretion in arriving at the decision to the circuit court of the county in which the property withdrawn is located within 30 days from the announcement of the decision. The functions of the district shall be continued in the entire preexisting area thereof by the district until the final determination of the division of property.

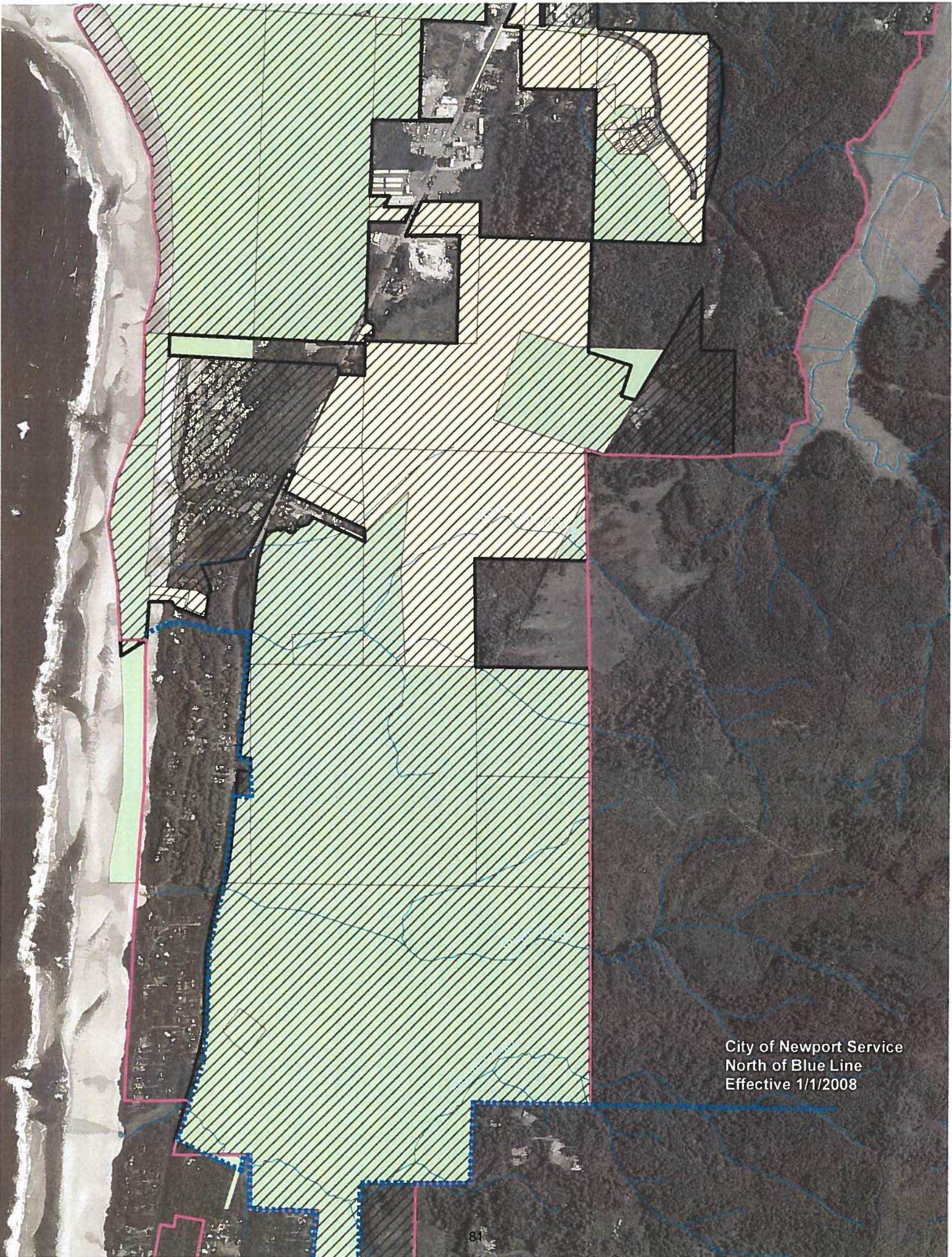
(4) This section shall not prevent the governing bodies of the city and the district from arriving at a binding agreement for a joint operation of the sewer, sewage disposal or other properties of each that will be beneficial to and equitable for the inhabitants and property owners of each after the withdrawal of part of the sanitary district.

**222.570 Effect on metropolitan sanitary districts.** ORS 222.560 shall not prevent the formation of metropolitan sanitary districts which may include cities under authority of other laws.

**222.575 Agreements for joint operation by city and district may be made before or after withdrawal.** The agreements referred to in ORS 222.530 (5), 222.540 (4) and 222.560 (4) may be entered into between the city and a district prior to and contingent upon the withdrawal of the annexed or incorporated area from the district under the provisions of ORS 222.524, or they may be made after such withdrawal. [1957 c.401 §5]

**222.580 Procedure applicable to prior annexations in which no property division was made.** The provisions of ORS 222.510 to 222.570 and 242.050 are applicable to areas annexed to or incorporated as cities prior to March 18, 1949. The procedure provided in those sections may be followed in all cases in which such incorporation or annexation was effective prior to March 18, 1949,

and in which no apportionment of property was made by March 18, 1949. As to any such district which has not already been taken over by, or come to an agreement with, the city involved, the effective date of the taking over shall be March 18, 1949, or the date of the agreement arrived at under the standards provided in ORS 222.530 to 222.560.



City of Newport Service  
North of Blue Line  
Effective 1/1/2008





## CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VIII.B  
Meeting Date: October 21, 2014

### Agenda Item:

## REPORT AND DISCUSSION ON ALTERNATIVES TO THE PROPOSED ELECTRONIC MESSAGE SIGN FOR CITY CENTER

### Background:

At the second meeting in August, a presentation was made by the City Center Newport Association to construct a large messaging sign on the NW corner of Hurbert Street and Highway 101 with the sign incorporating art deco elements in its design. Following the public hearing in which there was testimony both for and against this proposed project, the City Council requested that city administration work with the City Center Newport Association board of directors to review alternatives to the project as submitted. The City Council indicated that they did not necessarily have objections to a messaging sign being located somewhere in city center, however, the scale and location were problematic. In addition, there was discussion about doing a much smaller scale project to help clean up and green up the NW corner of Hurbert Street and Highway 101. I have since met with the City Center Newport Association board of directors to discuss the City Council action in August 2014, and a number of alternate locations were discussed for the sign. The committee felt that the most desirable location would be on Highway 101 across from City Hall where the current clock tower is located. The landscaping in place for the clock tower would provide an appropriate setting for this message sign. The clock could potentially be moved to the northwest corner of Hurbert Street and Highway 101 to clean up that location. Other alternate locations include the small area that separates the Chevron station between City Hall and the Chevron dealership; the east side of Highway 101 at the corner of Abbey Street; and the corner of the Newport City Hall, which could be done in conjunction with signage at City Hall.

In addition, the City Center Newport Association indicated that the improvement of the northwest corner of Hurbert Street and Highway 101 has been the subject of various plans for improving the aesthetics of this important intersection within the City of Newport. The plans included various designs and should be a starting point for discussions with the adjacent property owners who have been quite divided on the various concepts suggested for this location. The City Center Newport Association also felt that any improvements to the crosswalk, to be completed by ODOT, need to be considered in any design processes for this corner.

Derrick Tokos, Tim Gross, and I met following this meeting to discuss these issues. The preferred location of the City Center Newport Association would require coordination with ODOT since this is state right-of-way. The adjacent property has been recently acquired

with potential plans for redeveloping that area. This is something that would need to be understood in looking at this primary location.

As to the park project, I will be scheduling a meeting of property owners to discuss small scale improvements that could occur on that corner. It should be noted that if the city establishes a new urban renewal district on the north side of the bridge, there could be more significant projects occurring in the future that could impact the property. Therefore, from the staff standpoint, we believe a small scale aesthetic improvement would be appropriate in the event that more significant projects might be contemplated as part of the long-term urban renewal district.

I do not have a recommendation for the City Council, at this point, regarding either the sign or the improvements to the northwest corner of Hurbert Street and Highway 101. However, it would be appropriate for the City Council to share any thoughts, ideas, and concerns they have with the options outlined in this report.

Recommended Action:

None at this time.

Fiscal Effects:

\$90,000 remains for the potential community event sign and/or improvements to the northwest corner of Hurbert Street and Highway 101.

Alternatives:

None at this time.



Respectfully Submitted,  
Spencer R. Nebel  
City Manager

Date: October 7, 2014  
To: City of Newport Council  
From: City Center Newport Association Board of Directors  
Subject: Continuing discussion regarding community events sign

The City Center Newport Association (CCNA) Board of Directors would like to go on record supporting the idea of separating the pocket park for the Deco District at the northwest corner of Hurbert Street and Highway 101 from the installation of an electronic community event message board.

We understand that the City Council has gone on record desiring the pocket park be developed without an electronic sign. We remind the council that extensive planning and design work has already been developed for the corner of Hurbert and Highway 101. That planning included designs of different scale and cost. Those plans are in the hands of city officials.

What we would add to the discussion is the possibility that the smaller area of the Hurbert and 101 lot be developed to incorporate the clock now located across Highway 101 from City Hall. We would propose the same kind of landscaping used in the clock's present location. We propose that that site would be the most ideal site for the new electronic sign.

There are no other good alternatives to that site, but we did discuss a few.

The small area that separates the Chevron station next to City Hall from the roadway between City Hall and the Chevron dealership.

Another location was the east side of Highway 101 at the corner of Abbey Street.

The corner of the Newport City Hall site was also discussed.

Suffice it to say that it is our desire to work with the City of Newport to find a suitable location for an electronic sign to benefit all segments of our community.





## CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VIII.C.  
Meeting Date: October 21, 2014

### Agenda Item:

## DISCUSSION ON THE ANNOUNCED CLOSURE OF THE U.S. COAST GUARD AIR FACILITY AT THE NEWPORT MUNICIPAL AIRPORT

### Background:

On Monday, October 20, the city, in conjunction with Lincoln County and the Port of Newport, will host a public forum to give the public an opportunity to express their views regarding the announcement by the commander of the 13<sup>th</sup> Coast Guard district of the closure of the air facility in Newport, Oregon. I have placed this item on the agenda as a placeholder so that if there are any follow-up actions that the City Council would like to consider that they could be handled at the October 21, 2014 meeting.

I am anticipating that following Monday's forum, that the conveners of the forum (Lincoln County, City of Newport, and Port of Newport) will meet to discuss next steps regarding this matter.

### Recommended Action:

No recommended action at this time. If there are any actions items that Council should consider, they can be considered at Tuesday's meeting.

### Fiscal Effects:

None.

### Alternatives:

None recommended at this time.

A handwritten signature in black ink, appearing to read "SR Nebel".

Respectfully Submitted,  
Spencer R. Nebel  
City Manager





## CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VIII.D  
Meeting Date: October 21, 2014

### Agenda Item:

## DISCUSSION AND POSSIBLE APPOINTMENT OF A LIAISON TO THE CITY EMERGENCY PLANNING ADMINISTRATIVE COMMITTEE

### Background:

In 2013, an internal administrative committee was set up to develop appropriate responses in the event of emergencies that could occur in the City of Newport. Since the first of the year, this committee has been meeting on a regular basis and has been making significant progress on a variety of matters including setting up an emergency operations center within City Hall. Councilor Laura Swanson has suggested that it may be appropriate for the City Council to consider appointing a City Council liaison to this administrative committee. Based on the important integration of services during an emergency, that would impact elected officials through providers in the city organization, I believe this would be an appropriate consideration by the City Council. Councilor Swanson has expressed an interest in serving in this capacity. Councilor Swanson also mentioned, as an alternative, that City Council could rotate its service with this committee similar to what is being done with City Employee Administrative Committee. The decision on appointment of a liaison is a Council decision.

### Recommended Action:

I recommend that the City Council consider the following motion:

I move to establish a Council liaison to the city's administrative Emergency Planning Committee.

If this motion is approved, I would recommend that the City Council appoint one of its members to serve in this capacity with the following motion:

I move that \_\_\_\_\_ be appointed to serve as the City Council liaison to the city's administrative Emergency Planning Committee.

### Fiscal Effects:

None.

Alternatives:

Do not establish a City Council liaison position to this administrative committee.

A handwritten signature in black ink, appearing to read 'Spencer R. Nebel', written in a cursive style.

Respectfully Submitted,  
Spencer R. Nebel  
City Manager