



**CITY COUNCIL AND LOCAL CONTRACT REVIEW BOARD MEETING AGENDA
Monday, January 5, 2015 -Immediately Following the 6:00 P.M. Organizational
Meeting/Reception
Council Chambers**

The meeting of the Newport City Council and Local Contract Review Board will be held on Monday, January 5, 2015, immediately following the Organizational Meeting/Reception which begins 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.

**CITY COUNCIL AND LOCAL CONTRACT REVIEW BOARD MEETING AGENDA
Monday, January 5, 2015
Immediately Following the Organizational Meeting/Reception
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.

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. Confirmation of Mayor's Re-appointments to Various City Committees

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. 2075 - An Ordinance Amending the Electronic Sign Code on Public Property
- B. Public Hearing and Possible Adoption of Ordinance No. 2073 - An Ordinance Repealing and Re-Enacting Chapter 4.05 of the Newport Municipal Code related to the Licensing of Businesses
- C. Public Hearing and Possible Adoption of Ordinance No. 2058 - An Ordinance Repealing and Re-Enacting Chapter 4.15 of the Newport Municipal Code related to the Licensing of Taxicabs and Taxicab Drivers

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 Thompson's Sanitary Service on the Curbside Composting Program

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. Approval of Amendment No. 1 to the Pacific Coast National Scenic Byways: Agate Beach Wayside Contract
- B. Approval of Amendment No. 3 (28487) for the Local Agency Agreement, Flexible Funds Program 2011 for the Highway 101 Pedestrian Safety Improvement Project

- C. Consideration of Resolution No. 3701 - Supporting an Application to the Bureau of Reclamation for a SMARTWater Grant for the Automatic Meter Interface (AMI) System
- D. Approval of Special Event Permit for the 2015 Seafood and Wine Festival - Greater Newport Chamber of Commerce

IX. LOCAL CONTRACT REVIEW BOARD MEETING AGENDA
Monday, January 5, 2014
City Council Chambers

- A. Call to Order
- B. Approval of Scope of Work with The Automation Group (TAG) for SCADA Integration at the Lakewood Hills and SE 40th Street Pump Station
- C. Adjournment

X. 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.

XI. 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.

XII. Adjournment

CITY MANAGER'S REPORT AND RECOMMENDATIONS



Agenda #: V.A.
Meeting Date: January 5, 2014

Agenda Item: Confirmation of the Mayor's Re-appointments to Various City Committees

Background:

Mayor Roumagoux has made reappointments to the following committees as follows:

*Library Board

(4 year terms- ending 12/31/18)

Evonne Mochon-Collura

*Parks and Recreation Committee

(2 year term- ending 12/31/16)

Jennie Scarborough

Karen Smith

Alisha Kern

Ed Simon

Fred Springsteen

*Destination Newport

(1 year term-ending 12/31/15)

John Clark

Ric Rabourn

Lorna Davis

Carrie Lewis

Judy Kuhl as Lodging

Steve Beck

*Senior Advisory Committee

(2 year term- ending 12/31/15)

Donna Fogarty

Eldon Miller

Please note this leaves vacancies on several committees which are as follows:

*Budget Committee

(3 year terms-ending 12/31/17)

2 vacancies

*Parks and Recreation Committee

(2 year term ending 12/31/16)

2 vacancies

*Destination Newport Committee

(1 year terms-ending 12/31/15)

1 vacancy-retail

*Senior Advisory Committee
(2 year term- ending 12/31/16)
2 vacancies

Wayfinding Committee
(2 year terms-ending 12/31/15)
1 vacancy-Agate Beach

In addition, we currently have a vacancy on the Airport Committee. We will create a list of current vacancies for all city committees, and request that interested citizens apply with the City Recorder to serve on these committees.

Recommended Action:

I recommend the City Council consider the following motion:

I move confirmation of the Mayor's re-appointments to the Library Board, Parks and Recreation Committee, Destination Newport Committee, and Senior Advisory Committee as outlined in this report.

Fiscal Effects:

None by this action.

Alternatives:

Reject the Mayor's re-appointments or as suggested by the City Council.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. R. Nebel", is written over the typed name.

Spencer R. Nebel,
City Manager



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #.VI.A.
Meeting Date: January 5, 2015

Agenda Item:

PUBLIC HEARING AND POSSIBLE ADOPTION OF ORDINANCE NO. 2075 - AN ORDINANCE AMENDING THE ELECTRONIC SIGN CODE ON PUBLIC PROPERTY

Background:

The Oregon Coast Council for the Arts has expressed their desire to utilize electronic message signs to promote activities occurring at the Performing Arts Center. The electronic signs would replace existing display panels that are located at the corner of Olive and Coast Streets, which are hand-painted signs that have to be swapped out manually.

The current zoning for the Performing Arts Center is P-1 "Public Structures". Currently the Zoning Ordinance does not permit electronic message signs on publicly zoned property. On September 2nd the City Council heard the request from the Oregon Coast Council for the Arts, and elected to initiate amendments to the Municipal Code, by referring this matter to the Planning Commission for consideration. The Planning Commission has held an initial work session on this matter, and formally held a public hearing on November 10th on this request. There was no opposition expressed to the proposed zoning change. On November 24th, the Planning Commission recommended that the Council approve the legislative change allowing electronic signs on publicly zoned property.

The amendment includes standards for electronic message signs on public zoned properties that are the same as those currently in existence for commercial and industrial areas, with the exception that electronic signs on public property are not prohibited within the Nye Beach Design Review District. Commercial and industrial signs would still be prohibited within the Nye Beach Design Review District. Electronic signs must be turned off between the hours of 11 pm and 6 am, cannot display animated moving video, flashing or scrolling messages, and must maintain the imagery for periods of time in excess of five minutes before changes occur. The Planning Commission recommends consideration of the ordinance by the City Council.

Recommended Action:

I recommend that the Mayor conduct a public hearing on Ordinance No. 2075, which would amend the Newport Municipal Code relating to electronic message signs.

Following the public hearing, I further recommend the City Council approve the following motion:

I move that Ordinance No. 2075, an ordinance amending the Newport Municipal Code relating to electronic message signs, be read by title only and placed for final passage.

The Mayor will then ask for a voice vote on whether to read the ordinance by title and placed for final passage.

If approved, the City Recorder will read the title of the ordinance.

A roll call vote on the final passage of the ordinance will then be requested by the Mayor and taken by the City Recorder.

Fiscal Effects:

None directly to the City in implementing this change.

Alternatives:

Do not amend Municipal Code, major changes are requested, refer the matter back to the Planning Commission with specific directions, or as suggested by the City Council.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "S. R. Nebel", is written over the typed name below.

Spencer R. Nebel
City Managers



Agenda Item # VI.A
Meeting Date January 5, 2015

CITY COUNCIL AGENDA ITEM SUMMARY

City of Newport, Oregon

Issue/Agenda Title Public Hearing on Ordinance No. 2075 Amending the Newport Municipal Code Related to Electronic Message Signs

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 Council to amend Chapter 10.10 of Title X to the Newport Municipal Code (NMC) to allow electronic message signs on publicly zoned properties within the City.

Proposed amendments are contained in Ordinance No. 2075, recommended by the Planning Commission for approval on November 24, 2014.

STAFF RECOMMENDATION: Staff recommends the City Council accept the Planning Commission recommendation and approve the ordinance.

PROPOSED MOTION: I move for reading, by title only, of Ordinance No. 2075, an ordinance amending Chapter 10.10 of the Newport Municipal Code, and for adoption by roll call vote.

KEY FACTS AND INFORMATION SUMMARY: The Oregon Coast Council for the Arts (OCCA) is interested in installing electronic message signs at the Performing Arts Center. The signs would replace existing display panels at the corner of Olive and Coast Street that house painted signs, which are swapped out manually. The Performing Arts Center property is under a P-1/“Public Structures” zoning designation. Chapter 10.10 of the Newport Municipal Code, which contains the City’s sign regulations, does not allow electronic message signs on public zoned property.

The City amended its sign code in 2012, at the request of ThomasFox Properties, LLC, to allow electronic message signs in certain commercial and industrial zones (Ordinance No. 2037). This allowed an electronic message sign to be installed at the new Walgreens store at the intersection of US 101 and US 20. Electronic message signs have since been installed at other commercial locations along US 101. Ordinance No. 2037 does not allow such signs within marine zones (e.g. the bay front) or inside the Nye Beach Design Review District.

The City Council considered OCCA’s request and on September 2, 2014 elected to initiate amendments to the Municipal Code. The matter was referred to the Planning Commission, which held a work session on September 8, 2014 and public hearing on November 10, 2014. The Commission continued the hearing to November 24, 2014 so that further amendments could be made to the proposed standards, and has provided a favorable recommendation to the City Council.

To accommodate OCCA’s request, NMC Chapter 10.10 has been revised to include a new subsection that is specific to public zoned properties. Similar subsections already exist for commercial/industrial/marine districts, and residential districts. Existing sign code provisions for public zones are currently scattered throughout the chapter. These same provisions arguably apply to all signs outside of public rights-of-way, irrespective of where they are located, creating conflicts between competing provisions. Those conflicts have been eliminated. The proposed standards for electronic message signs on public zoned properties are tailored to match those currently in existence for commercial and

industrial areas with the exception that they are not prohibited within the Historic Nye Beach Design Review District. At its November 10th meeting, the Commission requested language to establish a night-time limit or “cap” on the brightness setting for electronic message signs. Further, they asked that 11 p.m. to 6:00 a.m. be established as a shut off period for electronic message signs, unless the sign is associated with a business or facility that is open to the public (in which case the sign can remain active while the business or facility is open). Lastly, several housekeeping amendments have been made to the sign code, including changes to clarify the procedure the City uses to evaluate variance applications.

OTHER ALTERNATIVES CONSIDERED: Not amending the Municipal Code. Electronic message signs would continue to be prohibited in public zones.

CITY COUNCIL GOALS: There are no specific Council goals applicable to this request.

ATTACHMENT LIST:

- Ordinance No. 2075
- Clean copy of revised NMC Chapter 10.10
- Minutes from the November 10, 2014 and November 24, 2014 Planning Commission meetings
- Copy of City advertisement with the News-Times for the Council hearing

FISCAL NOTES: No fiscal impacts have been identified.

CITY OF NEWPORT

ORDINANCE NO. 2075

**AN ORDINANCE AMENDING CHAPTER 10.10 OF THE NEWPORT MUNICIPAL
CODE (ORDINANCE NO. 1943, AS AMENDED)
RELATING TO ELECTRONIC MESSAGE SIGNS
ON PUBLIC ZONED PROPERTY**

Findings:

1. Chapter 10.10 of the City of Newport Municipal Code (Ordinance No. 1943, as amended) contains standards regulating the time, place and manner in which signs may be constructed in order to protect and promote the health, safety, and welfare of the public and to improve the aesthetic appearance of the City. This Chapter applies to all portions of the City except for Agate Beach, which is subject to a separate set of sign standards that are codified under Chapter 10.15.
2. After the adoption of Newport Municipal Code (“NMC”) Chapter 10.10, technology has advanced to allow types of signage, including electronic message signs, which were not contemplated at the time the City originally established its signage regulations.
3. Although NMC Chapter 10.10 is not technically part of the Newport Zoning Ordinance (“NZO”), the City Council finds that the signage regulations contained in this chapter are effectively “land use regulations” for purposes of ORS 197.015(11) because they implement the City’s acknowledged comprehensive plan and are closely tied to the use and development of property. Accordingly, the Council finds that it is both consistent with state law and in the public interest to process the Amendment as a proposed text amendment to the NZO, which will provide additional notice, review, and opportunity for public comment than the City’s standard ordinance adoption procedures.
4. Pursuant to NZO 14.52.040(D), the City reviews proposed NZO text amendments under the City’s Type IV review process. This process requires a public hearing and recommendation by the City Planning Commission followed by the Council conducting a public hearing and making a legislative decision on the request.
5. Pursuant to NZO 14.36.020, an NZO text amendment may be initiated by motion of the City Council. Such motion was made on September 2, 2014, in response to a request by the Oregon Coast Council for the Arts (OCCA) to allow electronic message signs in public zoning districts.
6. The OCCA made the request because it is interested in installing electronic message signs at the Performing Arts Center. The signs would replace existing display panels at the corner of Olive and Coast Street that house painted signs, which are swapped out manually. The Performing Arts Center property is under a P-1/“Public Structures” zoning designation. Title X of the Newport Municipal Code, which contains the City’s sign regulations, does not allow electronic message signs on public zoned property.
7. The City amended its sign code in 2012, at the request of ThomasFox Properties, LLC, to allow electronic message signs in certain commercial and industrial zones (Ordinance #2037). This allowed

electronic message signs for the first time, and facilitated the installation of such a sign at the new Walgreens store at the intersection of US 101 and US 20. Electronic message signs have since been installed at other commercial locations along US 101. Ordinance No. 2037 does not allow such signs within marine zones (e.g. the bay front) or inside the Nye Beach Design Review District. This limitation was imposed by the City Council following public testimony in opposition to such signage. The Performing Arts Center is within the Nye Beach Design Review District.

8. On September 8, 2014 the Planning Commission held a work session at which it reviewed the materials that were before the City Council and determined that it would like to see revisions (i.e. the Amendment) brought forward that would allow electronic message signs on publicly zoned property in the same manner as they are allowed on commercial or industrial properties. Further, the Commission expressed an interest in seeing the changes in draft form at a public hearing where it could take public testimony.

9. A draft Amendment to Title X to the Newport Municipal Code was prepared and provided to the Oregon Department of Land Conservation and Development ("DLCD") on October 3, 2014, more than 35 days prior to the initial legislative public hearing for the Amendment before the Planning Commission. This mailing satisfied the City's pre-hearing obligations for notice to DLCD.

10. The Amendment to Title X restructures the code to include a subsection that is specific to public zoned properties. Similar subsections already exist for commercial/ industrial/marine districts, and residential districts. Existing sign code provisions for public zones, scattered throughout Title X, have been consolidated into the new subsection. These same provisions arguably apply to all signs outside of public rights-of-way, irrespective of where they are located, creating conflicts between competing provisions. Those conflicts have been eliminated. The Amendment includes new standards for electronic message signs on public zoned properties that are the same as those currently in existence for commercial and industrial areas with the exception that they are not prohibited within the Historic Nye Beach Design Review District. The draft also corrects typographical errors and makes other similar housekeeping corrections.

11. On October 31, 2014, the City published notice of the Planning Commission hearing relating to the Amendment. The published notice ran in the in the Newport News-Times and listed the date, time, and place of the Planning Commission hearing, which was November 10, 2014. This notice satisfied the City's pre-hearing obligations for notice to the public. Notice of the hearing was also provided to Cindy and Mark McConnell, Ryc Cyr, and Deane Bristow, all of whom had requested that the City notify them once a hearing date was set.

12. On November 10, 2014, the Planning Commission conducted a public hearing to discuss the Amendment. The entire Community Development Department file on the application was physically before the Planning Commission. The Planning Commission did not reject any part of the Community Development Department file. Derrick I. Tokos, AICP, then presented the City Community Development Department staff report, which included a description of the proposed amendment and relevant approval standards. Mark McConnell and Catherine Rickbone attended on behalf of OCCA to testify in favor of the Amendment. No other testimony was provided. At the conclusion of the hearing, the Planning Commission closed the public hearing and discussed the Amendment. A recommendation was made that further changes be made to establish a maximum brightness level for electronic message signs, and that the hours when a sign must be shutoff be clarified for circumstances when the sign is not attributed to an on premise business. A motion was then made,

and seconded, to direct staff to prepare a draft Ordinance, with the requested changes, for consideration at the Commission's November 24, 2014 meeting. The Planning Commission voted to approve the motion.

13. On November 24, 2014, the Planning Commission reviewed the draft Ordinance. A motion was then made, and seconded, to recommend that the Council approve the legislative change and adopt the Amendment based upon substantial evidence in the record as a whole. The Planning Commission voted to approve the motion.

14. On December 27, 2014, the City published notice of the City Council hearing relating to the Amendment. The published notice ran in the in the Newport News-Times and listed the date, time, and place of the City Council hearing, which was January 5, 2015. This notice satisfied the City's pre-hearing obligations for notice to the public.

15. On January 5, 2015, the Council opened a public hearing on the Amendment. The entire Community Development Department file on the application was physically before the Council. The Council did not reject any part of the Community Development Department file. City manager, Spencer Nebel, then presented the Staff Report. Following the presentation, the Council accepted public testimony, and then closed the public hearing and discussed the Amendment. Based upon the Planning Commission recommendation, the evidence before the Council (which included the evidence before the Planning Commission), and oral and written testimony presented to the Council, a motion was made, and seconded, to adopt the ordinance as presented. The Council voted to approve the motion.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted as support for the Amendments, below.

Section 2. Chapter 10.10 of Ordinance No. 1943 (as amended), Signs, is amended as shown in Exhibit "A."

Section 3. This ordinance shall take effect 30 days after its adoption.

Date adopted and read by title only: _____

Signed by the Mayor on _____, 2015.

Sandra Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

CHAPTER 10.10 SIGNS

10.10.005 Short Title

This chapter may be referred to as the Newport Sign Code.

10.10.010 Purpose

The purposes of the Newport Sign Code are:

- A. To protect and promote the health, safety, property, and welfare of the public, including but not limited to promotion and improvement of traffic and pedestrian safety.
- B. To improve the neat, clean, and orderly appearance of the city for aesthetic purposes.
- C. To allow the erection and maintenance of signs consistent with the restrictions of the Newport Sign Code.
- D. To prevent distraction of motorists, bicyclists and pedestrians.
- E. To allow clear visibility of traffic signs and signal devices, pedestrians, driveways, intersections, and other necessary clear vision areas.
- F. To provide for safety to the general public and especially for firemen who must have clear and unobstructed access near and on roof areas of buildings.
- G. To preserve and protect the unique scenic beauty and the recreational and tourist character of Newport.
- H. To regulate the construction, erection, maintenance, electrification, illumination, type, size, number, and location of signs.

10.10.015 Scope

All signs shall comply with this chapter. Provided however, that any signs in the Agate Beach area annexed in 1998 shall comply ~~also comply~~ with Chapter 10.15, and in the event of an inconsistency between the two chapters, Chapter 10.15 shall prevail as to any property within the Agate Beach area.

10.10.020 Prohibited Signs

No sign may be erected, maintained, or displayed except as expressly authorized by this chapter.

10.10.025 Conflicting Provisions

If any provisions of this chapter conflict with any law or regulation requiring a sign or notice, the law or regulation requiring the sign or notice shall prevail.

10.10.030 Definitions

The definitions in this section apply in this chapter.

- A. **Adjacent** means immediately next to and on the same side of the street.
- B. **Awning** includes any structure made of cloth, metal, or similar material with a frame attached to a building that may project outwards but can be adjusted to be flat against the building when not in use.
- C. **Building** shall include all structures other than sign structures.
- D. **Bulletin Boards**. A bulletin board is a surface for posting posters, cards, or notices, usually of paper, and not illuminated or electrical.
- E. **Business** means the premises where a duly licensed business is conducted. Multiple businesses conducted within the same premises shall be subject to the same limits as would a single business on the same premises.
- F. **Canopy** includes any structure made of cloth, metal, or similar material projecting out from a building that is fixed and not retractable.
- G. **Clearance** is the distance between the highest point of the street, sidewalk, or other grade below the sign to the lowest point of the sign. ~~(See Exhibit A.)~~
- H. **Display Area** means the area of a regular geometric figure that encloses all parts of the display surface of the sign. Structural supports that do not include a display or message are not part of the display area.

- I. **Erect** means to build, attach, hang, place, suspend, paint, affix, or otherwise bring into being.
- J. **Externally Illuminated Sign** is a sign illuminated by an exterior light source that is primarily designed to illuminate the sign.
- K. **Face** means any part of a sign arranged as a display surface substantially in a single plane.
- L. **Grade** means the surface of the ground at the point of measurement. Height shall be measured from the lowest point of the grade immediately below the sign or any sidewalk or street within 5 feet of the sign and the top of the sign.
- M. **Internally Illuminated Sign** shall mean a sign illuminated by an interior light source, which is primarily designed to illuminate only the sign.
- N. **Multiple Business Property** means a property used for business or commercial purposes under a single ownership or control and containing less than 40,000 square feet of land area and on which three or more separate businesses or commercial enterprises are located.
- O. **Painted** includes the application of colors directly on a wall surface by any means.
- P. **Person** means individuals, corporations, firms, partnerships, associations, and joint stock companies.
- Q. **Premise** means a lot, parcel, or tract of land.
- R. **Reader Board** is a sign designed so that the sign face may be physically or mechanically changed, but does not include electronic message signs.
- S. **Shopping Center** means any property used for business or commercial purposes under a single ownership or control having at least 40,000 square feet of land area and on which are located business or commercial improvements containing at least 20,000 square feet of floor space.

- T. **Sign** means any medium, including structure and component parts, which is used or intended to be used to display a message or to attract attention to a message or to the property upon which such sign is located.
1. **Electronic Message Sign** means a permanent sign consisting of text, symbolic imagery, or both, that uses an electronic display created through the use of a pattern of lights in a pixilated configuration allowing the sign face to intermittently change the image without having to physically or mechanically replace the sign face, including an LED (Light Emitting Diode) sign, as distinguished from a static image sign.
 2. **Freestanding Sign** means any sign permanently attached to the ground that is not affixed to any structure other than the sign structure.
 - a. **Pole Sign** means a freestanding sign that is mounted on a pole or other support that is not as wide as the sign.
 - b. **Monument Sign** means a freestanding sign in which the sign structure is at least as wide as the sign.
 3. **Mural Sign** means a sign that is painted directly on the wall of a building or retaining wall, without any sign structure or additional surface.
 4. **Portable Sign** means a sign that is not attached to the ground or any structure and is movable from place to place. "Portable sign" does not include any sign carried or held by an individual.
 5. **Projecting Sign** means a sign attached to the wall or roof of a building with a sign face that is not parallel to the wall or roof.
 6. **Roof Sign** means a sign attached to a roof of a building, or a sign attached to a wall of a building but extending above the top edge of the wall where the sign is located.
 7. **Temporary Sign** means any sign, regardless of construction materials, that is not permanently mounted and is intended to be displayed on an irregular basis for a limited period of time

8. **Wall Sign** means any sign attached to a wall of a building that does not extend above the wall of the building and is parallel to and within one foot of the wall.
9. **Window Sign** shall mean any sign placed inside or upon a window facing the outside and which is visible from the exterior.
- U. **Sign Business** means the business of constructing, erecting, operating, maintaining, leasing, or selling signs.
- V. **Sign Structure** means the supports, upright braces, and framework of the sign.

10.10.035 Application, Permits, and Compliance

- A. Except as exempted by this chapter, no person shall erect, replace, reconstruct, move, or remove any permanent sign without a sign permit, or place a temporary or portable sign without a sign permit. All signs shall comply with this chapter and any other applicable law. Any sign permit may be withdrawn for violation of this chapter or any other applicable law.
- B. Written applications on city forms are required. The applicant shall provide the following information:
 1. Name, address, and telephone number of the applicant.
 2. Proposed sign location, identifying the property and any building to which the sign will be attached.
 3. A sketch, plan, or design showing the method of attachment, structure, design, and such other information necessary to allow a determination of compliance. Nothing in this section requires the applicant to provide any information regarding the content of any message displayed on the sign.
 4. Grade, height, dimensions, construction materials, and specifications.
 5. Underwriter Laboratories certification in the case of an electrical sign.

6. Name and address of the person, firm, corporation, or other business association erecting the structure.
- C. The city shall issue a sign permit based on a determination that the proposed sign complies with this chapter and other applicable law. Construction of the sign must be completed within 90 days after issuance of the sign permit. An extension of the 90-day period may be granted. If a sign was partially constructed and not completed within the 90-day period or any extension, the partially completed work shall be removed. Permits shall specify the location, size, and type of sign, and any conditions applicable to the sign. Permits for temporary signs and portable signs in rights of way shall specify the duration of the permit and/or the times when the signs may be in place.
 - D. When electrical permits are required, they shall be obtained and the installation approved prior to making connection to the electrical power source.
 - E. Permit fees shall be established by resolution of the City council, and paid with submission of the sign permit application, as follows:
 1. For the erection, placement, replacement, reconstruction, or relocation of a sign. Such fee shall be supplemented by a surcharge for a mural sign that exceeds the maximum permissible size for a wall sign in the same location. Non-profit organizations are exempt from the requirement to pay the supplemental fee for a mural sign.
 2. For the repair, demolition, or removal of an existing sign and/or its supporting structure.
 3. For temporary signs placed in the right of way. Non-profit organizations are exempt from the requirement to pay this fee.
 4. For portable signs placed in the right of way. Such fee shall include a monthly charge for use of the public right-of-way. Non-profit organizations are exempt from the requirement to pay either fee required by this section.

10.10.040 Signs in Public Rights-of-Way

- A. Except as provided in this section, permanent signs wholly located within rights-of-way are prohibited. A sign permit does not allow a sign to project into any part of any public right-of-way unless expressly stated in the permit. Each applicant shall determine the location of the public right-of-way and whether any proposed permanent sign will project into any public right-of-way. Any sign permit that allows a sign projecting into any public right-of-way shall be revocable at any time by the city with or without cause.
- B. Permits are required for temporary or portable signs within rights-of-way and may be issued only if authorized in this section.
 1. Permits for temporary and/or portable signs in rights-of-way may be granted if the sign is to be in place for no more than five consecutive days and no more than 10 total days in a calendar year.
 2. Permits for portable signs within rights-of-way for more than five consecutive days and more than 10 total calendar days in a year may be granted if the portable sign is placed adjacent to a business location operated by the permittee, the sign is removed at all times when the business is not open, and the sign is within the following areas:
 - a. On SW Coast Highway between SW Angle Street and SW Fall Street.
 - b. On SW Bay ~~Boulevard-Street~~ between SW Naterlin Drive and SW Bay Boulevard. On Bay Boulevard between SW Bay Street and SE Moore Drive.
 - c. On Hurbert Street between SW 7th Street and SW 9th Street.
 - d. In the area bounded by Olive Street on the south, NW 6th Street on the north, SW High Street and NW Coast Street on the east and the Pacific Ocean on the west, including both sides of each named street. For purposes of this section, "Olive Street" means both Olive Street and the area that Olive Street would occupy if it continued straight to the Pacific Ocean west of SW Coast Street.

- e. On SE Marine Science Drive/SE OSU Drive between SE Pacific Way and Yaquina Bay.
- f. In that portion of the South Beach area of Newport, east of Highway 101, west of Kings Slough, south of the intersection of Highway 101 and 40th Street and north of the intersection of Highway 101 and 50th Street.

(Chapter 10.10.040(B.)(2.)(f.) was added by the adoption of Ordinance No. 2001, adopted on March 16, 2010; effective April 15, 2010.)

- 3. Permits may be granted under Subsections B.1 and B.2 of this section only if:
 - a. The sign is not within any vehicle travel lane;
 - b. The sign does not restrict clear vision areas at intersections and driveway access points; and
 - c. The sign does not prohibit pedestrian movement on a sidewalk.
- C. The following signs are exempt from the prohibitions and requirements of this section:
 - 1. Sign placed by the city or other governmental entity with responsibility for the right-of-way.
 - 2. Permanent signs placed in a location where allowed by a license or easement from the city to an adjacent property owner to occupy the right-of-way. Signs allowed by this exemption must comply with all other requirements of this chapter, and the display area of the signs will be included in the calculation of the maximum display area of the adjacent property.
 - 3. Signs not exceeding one square foot on a pole in the right-of-way placed on the pole by its owner.
- D. Signs placed in ODOT right-of-way may also require approval from ODOT.
- E. No permit may be issued for a sign in the right-of-way unless the applicant provides proof of liability insurance in an amount determined to be sufficient by the city manager.

(Section 10.10.045 amended by Ordinance No. 1986, adopted on September 8, 2009; effective October 8, 2009.)

10.10.045 Prohibited Signs

No sign shall be constructed, erected, or maintained:

- A. That uses lights unless effectively screened, shielded, or utilized so as not to direct light directly into the eyes of motorists traveling on any street or highway.
- B. That includes any single light bulb that creates more light than a 60 watt incandescent bulb (800 lumens).
- C. That uses neon tubing on the exterior surface of a sign for sign illumination where the capacity of such tubing exceeds 300 milliamperes rating for white tubing or 100 milliamperes rating for any other color of tubing.
- D. That uses flashing or intermittent light.
- E. That uses any type of rotating beacon light, zip light, or strobe light, or any light not directed to or part of the illumination of the sign.
- F. That uses wind-activated devices or devices which flutter in the wind, such as propellers, but excluding flags, banners, and pennants.
- G. That is flashing, blinking, fluctuating, or animated, that has parts that are flashing, blinking, fluctuating, or animated; or that includes similar effects.
- H. That uses a guy wire for support of a sign, except where there exists no other means of support for a sign otherwise conforming to the requirements of this chapter.
- I. That has any visible moving parts, visible revolving parts, visible mechanical movement of any description, or any other apparent visible movement achieved by electrical, electronic, or kinetic means, including intermittent electrical pulsations or movement or action by wind currents.
- J. That is erected at the intersection of any street that substantially obstructs free and clear vision of motorists, pedestrians and cyclists, or at any location where it may interfere with, obstruct, or be confused with any authorized

traffic sign.

- K. While subject to these prohibitions, this section shall not be construed to prohibit electronic message signs where expressly permitted elsewhere in this chapter.

~~10.10.050~~ ~~—————~~ **Height and Dimensional Requirements**

- ~~A. The maximum height of all signs other than mural signs shall be no greater than 30 feet above grade.~~
- ~~B. The maximum horizontal or vertical dimension of the display surface of any sign other than mural signs shall not exceed:~~
 - ~~1. Thirty feet for freestanding and roof signs on properties adjacent to Highways 101 or 20 that are located at least 125 feet from the center line of the highway and at least 76 feet from the center line of any other street.~~
 - ~~2. Fifty feet or the width of the wall for wall sign horizontal dimension.~~
 - ~~3. Except as otherwise provided by the chapter, the maximum horizontal or vertical dimension of any display surface shall not exceed 20 feet.~~

10.10.055050 **Projection and Clearance**

- A. Signs shall not project more than 3 feet over any public right-of-way, and in no case shall be within 2 feet of a traveled roadway.
- B. The minimum clearance of any sign over driveways, parking lots, or public right-of-ways is 16 feet, excepting that the minimum clearance of any sign over a sidewalk is 8 feet, unless the sidewalk is used as a driveway.

~~10.10.060~~ ~~—————~~ **Number and Area of Signs**

- ~~A. Each right-of-way frontage of a business shall be limited to only one projecting or freestanding sign unless the frontage exceeds 200 lineal feet, in which case one additional freestanding or projected sign is permitted. Where a property contains an electronic message sign, only one freestanding sign is permitted. Other signs are not limited in number unless specifically limited or~~

~~restricted elsewhere in this chapter.~~

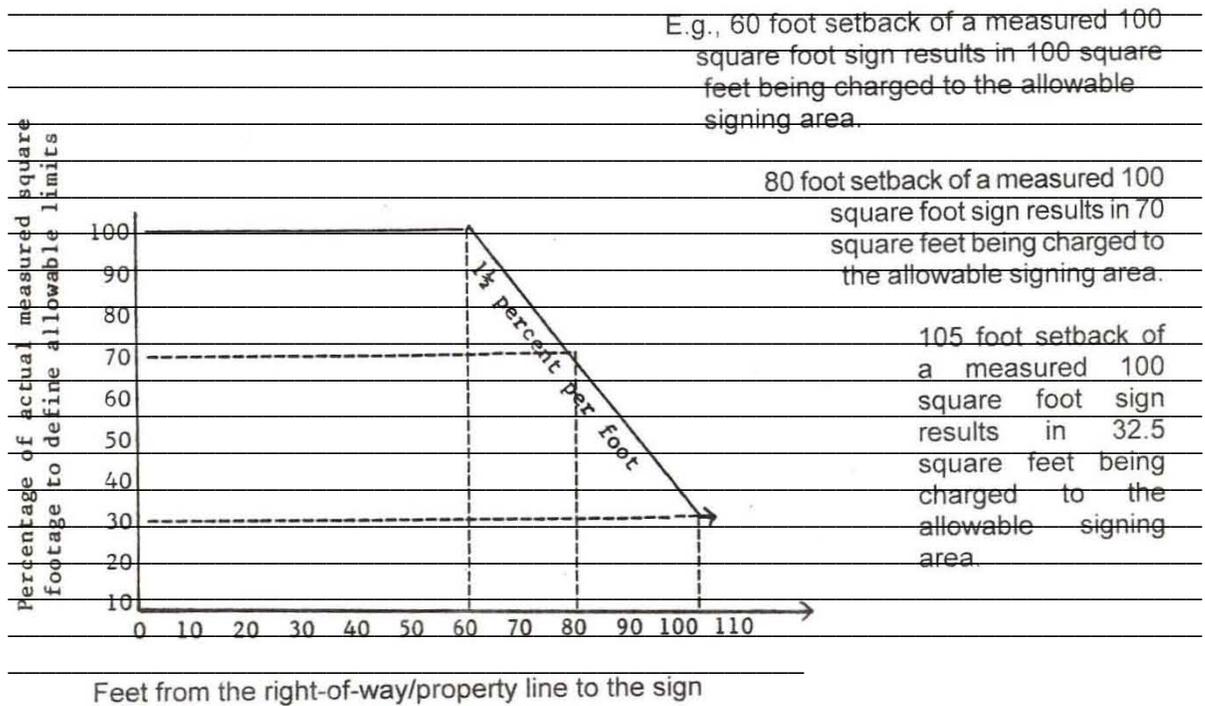
~~B. Each street frontage of a business shall be limited to no more than 200 square feet of display area for all non-exempt signs other than mural signs. Freestanding and projecting signs having two sides facing in opposite directions shall be counted as having only one face, which shall be the larger of the two faces if not of equal size. Only the larger face of back-to-back signs within two feet of each other and signs on opposite parallel ends of awnings shall be counted towards total maximum size.~~

~~1. The maximum total area of wall signs is two square feet of sign area for each lineal foot of street frontage.~~

~~2. The maximum total area for freestanding and projecting signs is one square foot of display area for each lineal foot of street frontage.~~

~~C. Notwithstanding any limitation on total sign area, each separate business is allowed at least 50 square feet of display area.~~

~~D. The maximum display area allowed shall be adjusted based on distance from the nearest property line, using the graph below:~~



e.g., 60-foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable sign area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable sign area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable sign area.

10.10.065055 Exempt Signs

The following signs are exempt from regulation under this chapter:

- A. Signs erected or maintained by or on behalf of a federal, state, or local governmental body. This exemption shall not apply to signs that are otherwise prohibited under Section 10.10.045 except when the sign is placed in a public right-of-way by the entity responsible for managing the public right right-of-way as allowed under Section 10.10.040 (C)(1).
- B. Signs not visible from a public right-of-way or from property other than the property where the sign is located. For

purposes of this section, “property where the sign is located” includes all property under common ownership,” and “visible” means that the sign face is visible.

10.10.070060 Partially Exempt Signs

- A. The following signs are exempt from the permit requirement and, except as expressly provided to the contrary, do not count towards maximum display area:
1. One sign not exceeding two square feet on each property with a separate street address, placed flat against the building.
 2. In a residential zone on a property where a home occupation is legally conducted, a non-illuminated sign not exceeding two square feet in area, placed flat against the building.
 3. Signs placed on post boxes.
 4. Non-illuminated signs on private property oriented towards internal driveways and parking areas, not to exceed 3 square feet in area.
 5. Signs that are an integral part a building, including those cut into any masonry surface, as well as signs integrated into the structure of a building constructed of bronze or other non-combustible materials.
 6. Signs placed within a public right of way place by the public entity with responsibility for administering the right of way.
 7. Flags.
- B. Each religious institution is allowed to have, in addition to signage otherwise allowed, additional signage not to exceed 48 square feet in area, including each face of any multiple faced sign. No single sign face may exceed 24 square feet, except reader boards, which may not exceed 32 square feet and bulletin boards, which may not exceed 16 square feet. The sign(s) allowed by this subsection are exempt from the maximum total display area standard.
- C. Each community center and educational institution is allowed one reader board not exceeding 32 square feet in

area in addition to other allowed signs. The sign allowed by this subsection is exempt from the maximum total display area standard.

- D. Temporary signs complying with all of the following are permitted in all zones without a permit, in addition to any other permitted signs:
 - 1. The signs must be entirely on private property and outside of any vision clearance areas.
 - 2. The signs do not exceed 20 square feet of display area or any horizontal or vertical dimension of 8 feet.
 - 3. The signs are not erected more than 90 days prior to the date of an election and they are removed within 30 days after the election.
 - 4. They are erected or maintained with the consent of the person or entity lawfully in possession of the premises and any structure to which they are attached.

- E. One temporary portable sign per business placed on private property is permitted. Temporary portable signs shall be made of permanent, durable materials and shall be maintained in a good condition. Temporary signs (portable and attached) in the aggregate may not exceed 24 square feet for all display area surfaces on a single property. Temporary signs shall not be included in the calculation of total maximum display area. All portable signs shall be weighted, anchored, or constructed so that they will not move or collapse in the event of wind, or otherwise create a hazard.

(Chapter 10.10.070(E.) was added by the adoption of Ordinance No. 2001 on March 16, 2010; effective April 15, 2010.)

10.10.075 ————— **Roof Signs**

~~One roof sign per business property is permitted.~~

10.10.080065 **Signs at Subdivision Entrances**

One permanent sign per subdivision entrance not to exceed 16 square feet in area is permitted. Signs at subdivision entrances may be illuminated but which shall not obstruct any required vision clearance area.

10.10.085070

Vehicle Signs

Any sign attached to or imprinted upon a validly licensed motor vehicle operating legally upon the streets and highways of the State of Oregon is exempt from this chapter while the vehicle is traveling upon any street or highway, or while such vehicle is parked to carry out an activity incidental to interstate commerce, but is otherwise not exempt unless:

- A. The sign is painted or otherwise imprinted upon, or solidly affixed to, the surface of the vehicle, with no projection at any point in excess of 6 inches from the surface of the vehicle.
- B. The vehicle, with the sign attached, complies with all applicable requirements of the Motor Vehicle Code required for the lawful operation thereof.

10.10.090075
Districts

R-1, R-2, and R-3 Residential

In all R-1, R-2, and R-3 residential districts, the following signs are allowed:

- A. One non-illuminated sign not exceeding 2 square feet.
- B. One non-illuminated temporary sign not exceeding 8 square feet in area.
- C. One non-internally illuminated sign not exceeding 20 square feet in area placed flat against the building for each apartment complex.

10.10.095080

R-4 Residential District

In an R-4 residential district, the following signs are allowed:

- A. For residential uses, signs allowed in the R-1, R-2 and R-3 districts.
- B. For hotels, motels, recreational vehicle parks, and movie theaters, no more than two illuminated signs that do not exceed 100 square feet in total area. The signs may be internally or externally illuminated, but may not include electronic message signs.
- C. For all other uses, a maximum of 20 square feet of sign

area per street frontage. The maximum area shall be a combination of wall and freestanding signs. Freestanding signs shall be set back a minimum of 10 feet from all property lines and shall not exceed 8 feet in height. No sign may be internally illuminated.

10.10.40085 Commercial, Industrial, and Marine Districts

In commercial, industrial, and marine zoning districts, ~~the following signs are allowed~~ subject to the following parameters:

- A. ~~The maximum total area for roof and wall signs shall not exceed~~ is two square feet of display area for each lineal foot of street frontage of the street.
- B. ~~The maximum total area for projecting and freestanding signs shall not exceed~~ is one square foot of display area for each lineal foot of street frontage. Projecting and freestanding signs having two sides facing in opposite directions shall be counted as having only one face, which shall be the larger of the two faces if not of equal size. Only the larger face of back-to-back signs within two feet of each other and signs on opposite parallel ends of awnings shall be counted towards total maximum size. One projecting or freestanding sign is allowed for each 100 feet of street frontage, unless the property contains an electronic message sign, in which case only one freestanding sign is permitted.
- C. ~~Each street frontage of a business shall be limited to not more than 2 signs, only one of which may be other than a wall sign unless there is more than 100-200 lineal feet of street frontage, in which case one additional sign is permitted. Where a property contains an electronic message sign, only one freestanding sign is permitted.~~
- D. Window signs shall not exceed 16 square feet in area. Window signs are not included in the calculation of total display area.
- E. Except within marine zoning districts or the Historic Nye Beach Design Review District, electronic message signs on properties with no more than one freestanding sign of up to 20 feet in height, provided the electronic message sign:

1. Is less than or equal to thirty-five percent (35%) of the total allowable sign area per sign face.
2. Displays text, symbolic imagery, or a combination thereof for a period of time in excess of (5) minutes before a change occurs. This provision does not apply to the display of time, date and temperature information.
3. Changes the entire display text, symbolic imagery, or combination thereof within two (2) seconds.
4. Is not illuminated during hours the business is closed. Is turned off between the hours of 11 p.m. and 6:00 a.m. unless the sign is associated with a business that is open to the public, in which case the sign may stay illuminated until the business is closed.
5. Does not contain or display animated, moving video, flashing, or scrolling messages.
6. Contains a default mechanism that freezes the sign in one position if a malfunction occurs.
7. Automatically adjusts the intensity of its display according to natural ambient light conditions.
8. Adheres to a maximum night-time illumination standard of 0.3 foot-candles as measured from a distance, in lineal feet, from the sign that is equivalent to the square root of the display area, in square feet, multiplied by 100.

F. Mural signs.

G. Each street frontage of a business shall be limited to no more than 200 square feet of display area for all non-exempt signs other than mural signs.

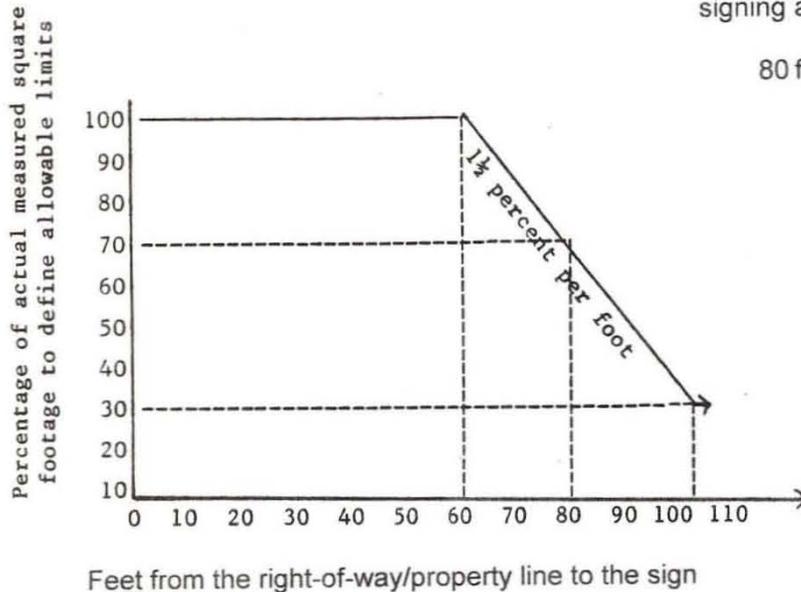
H. Notwithstanding any limitation on total sign area, each separate business is allowed at least 50 square feet of display area.

I. The maximum display area allowed shall be adjusted based on distance from the nearest property line, using the graph below:

E.g., 60 foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable signing area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable signing area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable signing area.



e.g., 60-foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable sign area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable sign area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable sign area.

J The maximum height of all signs other than mural signs shall be no greater than 30 feet above grade.

K. The maximum horizontal or vertical dimension of the display surface of any sign other than mural signs shall not exceed:

1. Thirty feet for freestanding and roof signs on properties adjacent to Highways 101 or 20 that are located at least 125 feet from the center line of the highway and at least 76 feet from the center line of any other street.
2. Fifty feet or the width of the wall for wall sign horizontal

dimension.

3. Except as otherwise provided by this chapter, the maximum horizontal or vertical dimension of any display surface shall not exceed 20 feet.

10.10.40590 **Signs in Shopping Centers**

For shopping centers and multiple business properties, the number and size of signs are governed by this section; ~~notwithstanding the provisions of the underlying zone.~~

- A. The maximum number of freestanding signs on shopping center properties is two and the maximum number of freestanding signs on multiple business properties is one.
- B. The maximum number of wall signs for shopping centers and multiple business properties is one per street frontage.
- C. For both shopping centers and multiple business properties, the maximum total area display area of all freestanding and wall signs and is one square foot for each lineal foot of street frontage, with a maximum of 200 square feet per sign. Only one side of a double-faced freestanding sign shall be including in the calculation of display area, provided that the sign faces are 180 degrees opposed and separated by two feet or less.
- D. In addition to the signs allowed by subsections A through C, each individual business may erect wall signs on the premises controlled by the individual business of up to two square feet of display area for each lineal foot of frontage. For the purposes of this subsection, the term frontage means the distance, measured in a straight line, along any one wall of the business premises facing and providing public access to the separate premises of the business. Where a business has entrances allowing public access on more than one frontage, wall signs may be erected for each frontage, but the display area maximum shall be calculated separately for each frontage.
- ~~E. The permit, size, area, and number restrictions do not apply to any signs in shopping centers and multiple business properties that are not visible from the public right of way or adjacent property.~~
- E. The provisions of NMC 10.10.085 for signs in commercial,

industrial, or marine districts apply to shopping centers and multiple business properties except as modified by this subsection.

10.10.095

P1, P-2, and P-3 Public Districts

In public zoning districts, signs are allowed subject to the following parameters:

- A. The maximum total area for roof and wall signs is two square feet of display area for each lineal foot of street frontage.
- B. The maximum total area for projecting and freestanding signs is one square foot of display area for each lineal foot of street frontage. Projecting and freestanding signs having two sides facing in opposite directions shall be counted as having only one face, which shall be the larger of the two faces if not of equal size. Only the larger face of back-to-back signs within two feet of each other and signs on opposite parallel ends of awnings shall be counted towards total maximum size.
- C. Each street frontage of a property shall be limited to not more than 2 signs, only one of which may be other than a wall sign unless there is more than 200 lineal feet of street frontage, in which case one additional sign is permitted. Where a property contains an electronic message sign, only one freestanding sign is permitted.
- D. Window signs shall not exceed 16 square feet in area. Window signs are not included in the calculation of total display area.
- E. Electronic message signs on properties with no more than one freestanding sign of up to 20 feet in height, provided the electronic message sign:
 - 1. Is less than or equal to thirty-five percent (35%) of the total allowable sign area per sign face.
 - 2. Displays text, symbolic imagery, or a combination thereof for a period of time in excess of (5) minutes before a change occurs. This provision does not apply to the display of time, date and temperature information.

3. Changes the entire display text, symbolic imagery, or combination thereof within two (2) seconds.
4. Is turned off between the hours of 11 p.m. and 6:00 a.m. unless the sign is associated with a facility that is open to the public, in which case the sign may stay illuminated until the facility is closed.
5. Does not contain or display animated, moving video, flashing, or scrolling messages.
6. Contains a default mechanism that freezes the sign in one position if a malfunction occurs.
7. Automatically adjusts the intensity of its display according to natural ambient light conditions.
8. Adheres to a maximum night-time illumination standard of 0.3 foot-candles as measured from a distance, in lineal feet, from the sign that is equivalent to the square root of the display area, in square feet, multiplied by 100.

F. Mural signs.

G. Each street frontage of a property shall be limited to no more than 200 square feet of display area for all non-exempt signs other than mural signs.

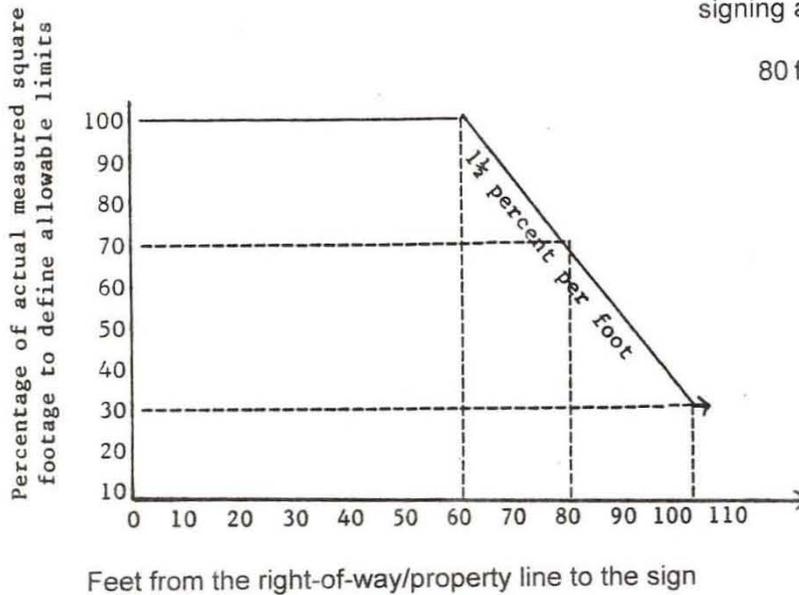
H. Notwithstanding any limitation on total sign area, each separate building is allowed at least 50 square feet of display area.

I. The maximum display area allowed shall be adjusted based on distance from the nearest property line, using the graph below:

E.g., 60 foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable signing area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable signing area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable signing area.



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105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable sign area.

- J The maximum height of all signs other than mural signs shall be no greater than 30 feet above grade.
- K. The maximum horizontal or vertical dimension of the display surface of any sign other than mural signs shall not exceed:
 1. Thirty feet for freestanding and roof signs on properties adjacent to Highways 101 or 20 that are located at least 125 feet from the center line of the highway and at least 76 feet from the center line of any other street.
 2. Fifty feet or the width of the wall for wall sign horizontal dimension.

3. Except as otherwise provided by this chapter, the maximum horizontal or vertical dimension of any display surface shall not exceed 20 feet.

10.10.110100 Construction and Safety Requirements

All signs shall be well constructed in accordance with all applicable codes and requirements of law and shall be maintained in a safe, neat, and clean condition. Signs that are not in good repair or condition through deterioration or other reasons are prohibited and shall be either repaired or removed. If not repaired or removed by the owner, signs that are not in good repair or condition may be abated as authorized by this code.

10.10.115105 Dangerous and Abandoned Signs

- A. Any sign or structure that is a nuisance or a dangerous structure may be abated as provided by city ordinances governing nuisances and dangerous structures. If the city manager or building official determines that any sign or sign structure constitutes an immediate threat, danger, or hazard to life, health, or property, the city manager or building official take any action necessary to immediately abate the risk, pursuant to the police power of the City of Newport and without prior notice.
- B. Any sign that has been abandoned or reasonably appears to be abandoned constitutes a hazard and may be abated as provided in Subsection A.

10.10.120110 Removal of Signs in Rights-of-Way

Any unauthorized sign in a public right-of-way may be removed immediately without notice by the city and removed to a place of storage. A notice of removal shall be sent to any owner of the sign known to the city, notifying the owner that the sign will be destroyed unless the owner claims the sign within 20 days of the notice. If the owner is unknown to the city, no notice is required and the sign may be destroyed if unclaimed after 20 days from the date of removal. No sign removed from the right-of-way shall be returned to the owner unless the owner pays a removal fee to the city in an amount set by Council resolution. If the city reasonably estimates the

value of the sign materials to be less than \$10.00, the city may immediately dispose of any sign left in the right-of-way without notice.

10.10.425115 Remedies

A sign erected or maintained in violation of this chapter is a nuisance and a civil infraction. The city may pursue any one or more of the legal, equitable administrative and self-help remedies legally available to it. All remedies of the city, both as a governmental body and otherwise are cumulative.

10.10.430120 Nonconforming Signs

- A. The purpose of this section is to discourage nonconforming signs and to work toward eliminating or removing nonconforming signs or bringing them into conformity with this chapter. Nonconforming signs shall not be enlarged, expanded or extended, nor used as grounds for adding other structures or signs otherwise prohibited.
- B. A nonconforming sign may not be altered as to size, message, or construction, except that common and ordinary maintenance to maintain the sign in a good and safe condition is allowed, including incidental structural repair or replacement.
- C. If a nonconforming sign is damaged or destroyed by any cause including normal deterioration to the extent that the cost of repair shall exceed 50% of the replacement value of the sign, the sign may not be repaired or restored, and may be replaced only by a sign conforming to the provisions of this chapter.

10.10.435125 Content and Interpretation

This chapter and Chapter 10.15 do not regulate the content of signs and shall be interpreted as not regulating content. These chapters shall be interpreted if at all possible to be consistent with constitutional protection of expression, and any provision that unconstitutionally restricts expression shall not be enforced, and the remainder of the provisions shall continue to be applicable and shall be applied constitutionally.

10.10.140130

Variance Requirements

Any person may seek a variance to the numerical provisions of this chapter or of Chapter 10.15 by filing a written application. The procedure and process applicable to zoning adjustments and variances (including but not limited to the notification process, public hearing process, conditions of approval, time limitations, and revocation of permits as applicable for the type of adjustment or variance requested) shall be followed. The fee ~~for a variance~~ shall be the same as for a zoning adjustment or variance. The criteria for the sign variance shall be as specified below. In addition to the requirements for submitting a zoning adjustment or variance, a sign inventory including the location, type, and size of each sign on the property shall be submitted with the ~~variance~~ application.

- A. All sign variance applications that propose to increase the number or size of signs or propose a variance from any other numerical standard shall be determined by the Planning Commission using the zoning Type III Variance procedure, based on a determination that the proposed variance is the minimum necessary to alleviate special hardships or practical difficulties faced by the applicant and that are beyond the control of the applicant.
- B. All sign variance applications based on a change in a sign or signs that decreases but does not eliminate an existing nonconformity shall be determined by the community development (planning) director using a Type II Variance Adjustment procedure, based on a determination that the ~~proposed proposal variance~~ will result in a reduction of the nonconformity without increasing any aspect of nonconformity.

10.10.145135

Violations

A violation of this chapter or of Chapter 10.15 is a civil infraction, with a civil penalty not to exceed \$500. The penalty for a second or subsequent violation within two years may be up to \$1,000. A violation occurs on the date of the occurrence of the act constituting the violation. Each violation is a separate infraction, and each day in which a violation occurs or continues is a separate infraction.

(Chapter 10.10 was enacted by Ordinance No. 2037 on May 21, 2012; effective June 20, 2012.)

CHAPTER 10.10 SIGNS

10.10.005 Short Title

This chapter may be referred to as the Newport Sign Code.

10.10.010 Purpose

The purposes of the Newport Sign Code are:

- A. To protect and promote the health, safety, property, and welfare of the public, including but not limited to promotion and improvement of traffic and pedestrian safety.
- B. To improve the neat, clean, and orderly appearance of the city for aesthetic purposes.
- C. To allow the erection and maintenance of signs consistent with the restrictions of the Newport Sign Code.
- D. To prevent distraction of motorists, bicyclists and pedestrians.
- E. To allow clear visibility of traffic signs and signal devices, pedestrians, driveways, intersections, and other necessary clear vision areas.
- F. To provide for safety to the general public and especially for firemen who must have clear and unobstructed access near and on roof areas of buildings.
- G. To preserve and protect the unique scenic beauty and the recreational and tourist character of Newport.
- H. To regulate the construction, erection, maintenance, electrification, illumination, type, size, number, and location of signs.

10.10.015 Scope

All signs shall comply with this chapter. Provided however, that any signs in the Agate Beach area annexed in 1998 shall comply with Chapter 10.15, and in the event of an inconsistency between the two chapters, Chapter 10.15 shall prevail as to any property within the Agate Beach area.

10.10.020 Prohibited Signs

No sign may be erected, maintained, or displayed except as expressly authorized by this chapter.

10.10.025 Conflicting Provisions

If any provisions of this chapter conflict with any law or regulation requiring a sign or notice, the law or regulation requiring the sign or notice shall prevail.

10.10.030 Definitions

The definitions in this section apply in this chapter.

- A. **Adjacent** means immediately next to and on the same side of the street.
- B. **Awning** includes any structure made of cloth, metal, or similar material with a frame attached to a building that may project outwards but can be adjusted to be flat against the building when not in use.
- C. **Building** shall include all structures other than sign structures.
- D. **Bulletin Boards**. A bulletin board is a surface for posting posters, cards, or notices, usually of paper, and not illuminated or electrical.
- E. **Business** means the premises where a duly licensed business is conducted. Multiple businesses conducted within the same premises shall be subject to the same limits as would a single business on the same premises.
- F. **Canopy** includes any structure made of cloth, metal, or similar material projecting out from a building that is fixed and not retractable.
- G. **Clearance** is the distance between the highest point of the street, sidewalk, or other grade below the sign to the lowest point of the sign.
- H. **Display Area** means the area of a regular geometric figure that encloses all parts of the display surface of the sign. Structural supports that do not include a display or message are not part of the display area.

- I. **Erect** means to build, attach, hang, place, suspend, paint, affix, or otherwise bring into being.
- J. **Externally Illuminated Sign** is a sign illuminated by an exterior light source that is primarily designed to illuminate the sign.
- K. **Face** means any part of a sign arranged as a display surface substantially in a single plane.
- L. **Grade** means the surface of the ground at the point of measurement. Height shall be measured from the lowest point of the grade immediately below the sign or any sidewalk or street within 5 feet of the sign and the top of the sign.
- M. **Internally Illuminated Sign** shall mean a sign illuminated by an interior light source, which is primarily designed to illuminate only the sign.
- N. **Multiple Business Property** means a property used for business or commercial purposes under a single ownership or control and containing less than 40,000 square feet of land area and on which three or more separate businesses or commercial enterprises are located.
- O. **Painted** includes the application of colors directly on a wall surface by any means.
- P. **Person** means individuals, corporations, firms, partnerships, associations, and joint stock companies.
- Q. **Premise** means a lot, parcel, or tract of land.
- R. **Reader Board** is a sign designed so that the sign face may be physically or mechanically changed, but does not include electronic message signs.
- S. **Shopping Center** means any property used for business or commercial purposes under a single ownership or control having at least 40,000 square feet of land area and on which are located business or commercial improvements containing at least 20,000 square feet of floor space.

- T. **Sign** means any medium, including structure and component parts, which is used or intended to be used to display a message or to attract attention to a message or to the property upon which such sign is located.
1. **Electronic Message Sign** means a permanent sign consisting of text, symbolic imagery, or both, that uses an electronic display created through the use of a pattern of lights in a pixilated configuration allowing the sign face to intermittently change the image without having to physically or mechanically replace the sign face, including an LED (Light Emitting Diode) sign, as distinguished from a static image sign.
 2. **Freestanding Sign** means any sign permanently attached to the ground that is not affixed to any structure other than the sign structure.
 - a. **Pole Sign** means a freestanding sign that is mounted on a pole or other support that is not as wide as the sign.
 - b. **Monument Sign** means a freestanding sign in which the sign structure is at least as wide as the sign.
 3. **Mural Sign** means a sign that is painted directly on the wall of a building or retaining wall, without any sign structure or additional surface.
 4. **Portable Sign** means a sign that is not attached to the ground or any structure and is movable from place to place. "Portable sign" does not include any sign carried or held by an individual.
 5. **Projecting Sign** means a sign attached to the wall or roof of a building with a sign face that is not parallel to the wall or roof.
 6. **Roof Sign** means a sign attached to a roof of a building, or a sign attached to a wall of a building but extending above the top edge of the wall where the sign is located.
 7. **Temporary Sign** means any sign, regardless of construction materials, that is not permanently mounted and is intended to be displayed on an irregular basis for a limited period of time

- 8. **Wall Sign** means any sign attached to a wall of a building that does not extend above the wall of the building and is parallel to and within one foot of the wall.
- 9. **Window Sign** shall mean any sign placed inside or upon a window facing the outside and which is visible from the exterior.
- U. **Sign Business** means the business of constructing, erecting, operating, maintaining, leasing, or selling signs.
- V. **Sign Structure** means the supports, upright braces, and framework of the sign.

10.10.035 Application, Permits, and Compliance

- A. Except as exempted by this chapter, no person shall erect, replace, reconstruct, move, or remove any permanent sign without a sign permit, or place a temporary or portable sign without a sign permit. All signs shall comply with this chapter and any other applicable law. Any sign permit may be withdrawn for violation of this chapter or any other applicable law.
- B. Written applications on city forms are required. The applicant shall provide the following information:
 - 1. Name, address, and telephone number of the applicant.
 - 2. Proposed sign location, identifying the property and any building to which the sign will be attached.
 - 3. A sketch, plan, or design showing the method of attachment, structure, design, and such other information necessary to allow a determination of compliance. Nothing in this section requires the applicant to provide any information regarding the content of any message displayed on the sign.
 - 4. Grade, height, dimensions, construction materials, and specifications.
 - 5. Underwriter Laboratories certification in the case of an electrical sign.

6. Name and address of the person, firm, corporation, or other business association erecting the structure.
- C. The city shall issue a sign permit based on a determination that the proposed sign complies with this chapter and other applicable law. Construction of the sign must be completed within 90 days after issuance of the sign permit. An extension of the 90-day period may be granted. If a sign was partially constructed and not completed within the 90-day period or any extension, the partially completed work shall be removed. Permits shall specify the location, size, and type of sign, and any conditions applicable to the sign. Permits for temporary signs and portable signs in rights of way shall specify the duration of the permit and/or the times when the signs may be in place.
 - D. When electrical permits are required, they shall be obtained and the installation approved prior to making connection to the electrical power source.
 - E. Permit fees shall be established by resolution of the City council, and paid with submission of the sign permit application, as follows:
 1. For the erection, placement, replacement, reconstruction, or relocation of a sign. Such fee shall be supplemented by a surcharge for a mural sign that exceeds the maximum permissible size for a wall sign in the same location. Non-profit organizations are exempt from the requirement to pay the supplemental fee for a mural sign.
 2. For the repair, demolition, or removal of an existing sign and/or its supporting structure.
 3. For temporary signs placed in the right of way. Non-profit organizations are exempt from the requirement to pay this fee.
 4. For portable signs placed in the right of way. Such fee shall include a monthly charge for use of the public right-of-way. Non-profit organizations are exempt from the requirement to pay either fee required by this section.

10.10.040 Signs in Public Rights-of-Way

- A. Except as provided in this section, permanent signs wholly located within rights-of-way are prohibited. A sign permit does not allow a sign to project into any part of any public right-of-way unless expressly stated in the permit. Each applicant shall determine the location of the public right-of-way and whether any proposed permanent sign will project into any public right-of-way. Any sign permit that allows a sign projecting into any public right-of-way shall be revocable at any time by the city with or without cause.
- B. Permits are required for temporary or portable signs within rights-of-way and may be issued only if authorized in this section.
 1. Permits for temporary and/or portable signs in rights-of-way may be granted if the sign is to be in place for no more than five consecutive days and no more than 10 total days in a calendar year.
 2. Permits for portable signs within rights-of-way for more than five consecutive days and more than 10 total calendar days in a year may be granted if the portable sign is placed adjacent to a business location operated by the permittee, the sign is removed at all times when the business is not open, and the sign is within the following areas:
 - a. On SW Coast Highway between SW Angle Street and SW Fall Street.
 - b. On SW Bay Street between SW Naterlin Drive and SW Bay Boulevard. On Bay Boulevard between SW Bay Street and SE Moore Drive.
 - c. On Hurbert Street between SW 7th Street and SW 9th Street.
 - d. In the area bounded by Olive Street on the south, NW 6th Street on the north, SW High Street and NW Coast Street on the east and the Pacific Ocean on the west, including both sides of each named street. For purposes of this section, "Olive Street" means both Olive Street and the area that Olive Street would occupy if it continued straight to the Pacific Ocean west of SW Coast Street.

- e. On SE Marine Science Drive/SE OSU Drive between SE Pacific Way and Yaquina Bay.
- f. In that portion of the South Beach area of Newport, east of Highway 101, west of Kings Slough, south of the intersection of Highway 101 and 40th Street and north of the intersection of Highway 101 and 50th Street.

(Chapter 10.10.040(B.)(2.)(f.) was added by the adoption of Ordinance No. 2001, adopted on March 16, 2010; effective April 15, 2010.)

- 3. Permits may be granted under Subsections B.1 and B.2 of this section only if:
 - a. The sign is not within any vehicle travel lane;
 - b. The sign does not restrict clear vision areas at intersections and driveway access points; and
 - c. The sign does not prohibit pedestrian movement on a sidewalk.
- C. The following signs are exempt from the prohibitions and requirements of this section:
 - 1. Sign placed by the city or other governmental entity with responsibility for the right-of-way.
 - 2. Permanent signs placed in a location where allowed by a license or easement from the city to an adjacent property owner to occupy the right-of-way. Signs allowed by this exemption must comply with all other requirements of this chapter, and the display area of the signs will be included in the calculation of the maximum display area of the adjacent property.
 - 3. Signs not exceeding one square foot on a pole in the right-of-way placed on the pole by its owner.
- D. Signs placed in ODOT right-of-way may also require approval from ODOT.
- E. No permit may be issued for a sign in the right-of-way unless the applicant provides proof of liability insurance in an amount determined to be sufficient by the city manager.

(Section 10.10.045 amended by Ordinance No. 1986, adopted on September 8, 2009; effective October 8, 2009.)

10.10.045 Prohibited Signs

No sign shall be constructed, erected, or maintained:

- A. That uses lights unless effectively screened, shielded, or utilized so as not to direct light directly into the eyes of motorists traveling on any street or highway.
- B. That includes any single light bulb that creates more light than a 60 watt incandescent bulb (800 lumens).
- C. That uses neon tubing on the exterior surface of a sign for sign illumination where the capacity of such tubing exceeds 300 milliamperes rating for white tubing or 100 milliamperes rating for any other color of tubing.
- D. That uses flashing or intermittent light.
- E. That uses any type of rotating beacon light, zip light, or strobe light, or any light not directed to or part of the illumination of the sign.
- F. That uses wind-activated devices or devices which flutter in the wind, such as propellers, but excluding flags, banners, and pennants.
- G. That is flashing, blinking, fluctuating, or animated, that has parts that are flashing, blinking, fluctuating, or animated; or that includes similar effects.
- H. That uses a guy wire for support of a sign, except where there exists no other means of support for a sign otherwise conforming to the requirements of this chapter.
- I. That has any visible moving parts, visible revolving parts, visible mechanical movement of any description, or any other apparent visible movement achieved by electrical, electronic, or kinetic means, including intermittent electrical pulsations or movement or action by wind currents.
- J. That is erected at the intersection of any street that substantially obstructs free and clear vision of motorists, pedestrians and cyclists, or at any location where it may

interfere with, obstruct, or be confused with any authorized traffic sign.

- K. While subject to these prohibitions, this section shall not be construed to prohibit electronic message signs where expressly permitted elsewhere in this chapter.

10.10.050 Projection and Clearance

- A. Signs shall not project more than 3 feet over any public right-of-way, and in no case shall be within 2 feet of a traveled roadway.
- B. The minimum clearance of any sign over driveways, parking lots, or public right-of-ways is 16 feet, excepting that the minimum clearance of any sign over a sidewalk is 8 feet, unless the sidewalk is used as a driveway.

10.10.055 Exempt Signs

The following signs are exempt from regulation under this chapter:

- A. Signs erected or maintained by or on behalf of a federal, state, or local governmental body. This exemption shall not apply to signs that are otherwise prohibited under Section 10.10.045 except when the sign is placed in a public right-of-way by the entity responsible for managing the public right right-of-way as allowed under Section 10.10.040 (C)(1).
- B. Signs not visible from a public right-of-way or from property other than the property where the sign is located. For purposes of this section, "property where the sign is located" includes all property under common ownership," and "visible" means that the sign face is visible.

10.10.060 Partially Exempt Signs

- A. The following signs are exempt from the permit requirement and, except as expressly provided to the contrary, do not count towards maximum display area:
 - 1. One sign not exceeding two square feet on each property with a separate street address, placed flat against the building.

2. In a residential zone on a property where a home occupation is legally conducted, a non-illuminated sign not exceeding two square feet in area, placed flat against the building.
 3. Signs placed on post boxes.
 4. Non-illuminated signs on private property oriented towards internal driveways and parking areas, not to exceed 3 square feet in area.
 5. Signs that are an integral part a building, including those cut into any masonry surface, as well as signs integrated into the structure of a building constructed of bronze or other non-combustible materials.
 6. Signs placed within a public right of way place by the public entity with responsibility for administering the right of way.
 7. Flags.
- B. Each religious institution is allowed to have, in addition to signage otherwise allowed, additional signage not to exceed 48 square feet in area, including each face of any multiple faced sign. No single sign face may exceed 24 square feet, except reader boards, which may not exceed 32 square feet and bulletin boards, which may not exceed 16 square feet. The sign(s) allowed by this subsection are exempt from the maximum total display area standard.
- C. Each community center and educational institution is allowed one reader board not exceeding 32 square feet in area in addition to other allowed signs. The sign allowed by this subsection is exempt from the maximum total display area standard.
- D. Temporary signs complying with all of the following are permitted in all zones without a permit, in addition to any other permitted signs:
1. The signs must be entirely on private property and outside of any vision clearance areas.
 2. The signs do not exceed 20 square feet of display area or any horizontal or vertical dimension of 8 feet.

3. The signs are not erected more than 90 days prior to the date of an election and they are removed within 30 days after the election.
 4. They are erected or maintained with the consent of the person or entity lawfully in possession of the premises and any structure to which they are attached.
- E. One temporary portable sign per business placed on private property is permitted. Temporary portable signs shall be made of permanent, durable materials and shall be maintained in a good condition. Temporary signs (portable and attached) in the aggregate may not exceed 24 square feet for all display area surfaces on a single property. Temporary signs shall not be included in the calculation of total maximum display area. All portable signs shall be weighted, anchored, or constructed so that they will not move or collapse in the event of wind, or otherwise create a hazard.

(Chapter 10.10.070(E.) was added by the adoption of Ordinance No. 2001 on March 16, 2010; effective April 15, 2010.)

10.10.065 Signs at Subdivision Entrances

One permanent sign per subdivision entrance not to exceed 16 square feet in area is permitted. Signs at subdivision entrances may be illuminated but which shall not obstruct any required vision clearance area.

10.10.070 Vehicle Signs

Any sign attached to or imprinted upon a validly licensed motor vehicle operating legally upon the streets and highways of the State of Oregon is exempt from this chapter while the vehicle is traveling upon any street or highway, or while such vehicle is parked to carry out an activity incidental to interstate commerce, but is otherwise not exempt unless:

- A. The sign is painted or otherwise imprinted upon, or solidly affixed to, the surface of the vehicle, with no projection at any point in excess of 6 inches from the surface of the vehicle.
- B. The vehicle, with the sign attached, complies with all applicable requirements of the Motor Vehicle Code required for the lawful operation thereof.

10.10.075 R-1, R-2, and R-3 Residential Districts

In all R-1, R-2, and R-3 residential districts, the following signs are allowed:

- A. One non-illuminated sign not exceeding 2 square feet.
- B. One non-illuminated temporary sign not exceeding 8 square feet in area.
- C. One non-internally illuminated sign not exceeding 20 square feet in area placed flat against the building for each apartment complex.

10.10.080 R-4 Residential District

In an R-4 residential district, the following signs are allowed:

- A. For residential uses, signs allowed in the R-1, R-2 and R-3 districts.
- B. For hotels, motels, recreational vehicle parks, and movie theaters, no more than two illuminated signs that do not exceed 100 square feet in total area. The signs may be internally or externally illuminated, but may not include electronic message signs.
- C. For all other uses, a maximum of 20 square feet of sign area per street frontage. The maximum area shall be a combination of wall and freestanding signs. Freestanding signs shall be set back a minimum of 10 feet from all property lines and shall not exceed 8 feet in height. No sign may be internally illuminated.

10.10.85 Commercial, Industrial, and Marine Districts

In commercial, industrial, and marine zoning districts, signs are allowed subject to the following parameters:

- A. The maximum total area for roof and wall signs is two square feet of display area for each lineal foot of street frontage.
- B. The maximum total area for projecting and freestanding signs is one square foot of display area for each lineal foot of street frontage. Projecting and freestanding signs

having two sides facing in opposite directions shall be counted as having only one face, which shall be the larger of the two faces if not of equal size. Only the larger face of back-to-back signs within two feet of each other and signs on opposite parallel ends of awnings shall be counted towards total maximum size.

- C. Each street frontage of a business shall be limited to not more than 2 signs, only one of which may be other than a wall sign unless there is more than 200 lineal feet of street frontage, in which case one additional sign is permitted. Where a property contains an electronic message sign, only one freestanding sign is permitted.
- D. Window signs shall not exceed 16 square feet in area. Window signs are not included in the calculation of total display area.
- E. Except within marine zoning districts or the Historic Nye Beach Design Review District, electronic message signs on properties with no more than one freestanding sign of up to 20 feet in height, provided the electronic message sign:
 - 1. Is less than or equal to thirty-five percent (35%) of the total allowable sign area per sign face.
 - 2. Displays text, symbolic imagery, or a combination thereof for a period of time in excess of (5) minutes before a change occurs. This provision does not apply to the display of time, date and temperature information.
 - 3. Changes the entire display text, symbolic imagery, or combination thereof within two (2) seconds.
 - 4. Is turned off between the hours of 11 p.m. and 6:00 a.m. unless the sign is associated with a business that is open to the public, in which case the sign may stay illuminated until the business is closed.
 - 5. Does not contain or display animated, moving video, flashing, or scrolling messages.
 - 6. Contains a default mechanism that freezes the sign in one position if a malfunction occurs.

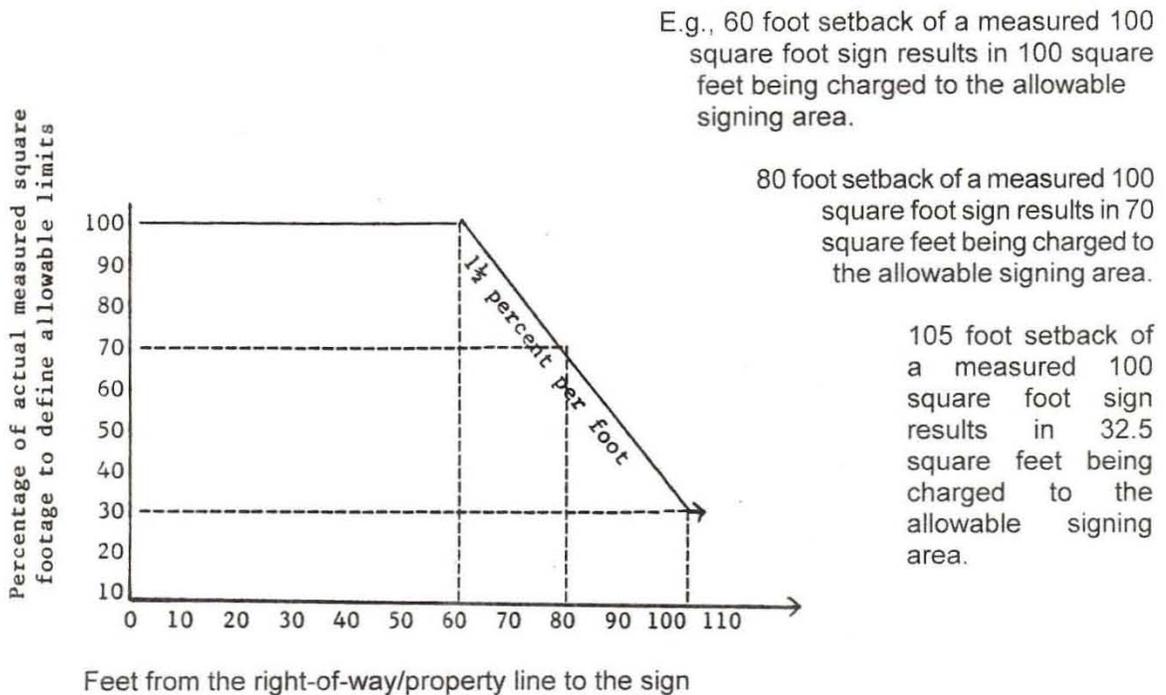
- 7. Automatically adjusts the intensity of its display according to natural ambient light conditions.
- 8. Adheres to a maximum night-time illumination standard of 0.3 foot-candles as measured from a distance, in lineal feet, from the sign that is equivalent to the square root of the display area, in square feet, multiplied by 100.

F. Mural signs.

G. Each street frontage of a business shall be limited to no more than 200 square feet of display area for all non-exempt signs other than mural signs.

H. Notwithstanding any limitation on total sign area, each separate business is allowed at least 50 square feet of display area.

I. The maximum display area allowed shall be adjusted based on distance from the nearest property line, using the graph below:



e.g., 60-foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable sign area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable sign area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable sign area.

- J The maximum height of all signs other than mural signs shall be no greater than 30 feet above grade.
- K. The maximum horizontal or vertical dimension of the display surface of any sign other than mural signs shall not exceed:
 - 1. Thirty feet for freestanding and roof signs on properties adjacent to Highways 101 or 20 that are located at least 125 feet from the center line of the highway and at least 76 feet from the center line of any other street.
 - 2. Fifty feet or the width of the wall for wall sign horizontal dimension.
 - 3. Except as otherwise provided by this chapter, the maximum horizontal or vertical dimension of any display surface shall not exceed 20 feet.

10.10.90 Signs in Shopping Centers

For shopping centers and multiple business properties, the number and size of signs are governed by this section.

- A. The maximum number of freestanding signs on shopping center properties is two and the maximum number of freestanding signs on multiple business properties is one.
- B. The maximum number of wall signs for shopping centers and multiple business properties is one per street frontage.
- C. For both shopping centers and multiple business properties, the maximum total area display area of all freestanding and wall signs and is one square foot for each lineal foot of street frontage, with a maximum of 200 square feet per sign. Only one side of a double-faced freestanding sign shall be including in the calculation of display area, provided that the sign faces are 180 degrees opposed and separated by two feet or less.

- D. In addition to the signs allowed by subsections A through C, each individual business may erect wall signs on the premises controlled by the individual business of up to two square feet of display area for each lineal foot of frontage. For the purposes of this subsection, the term frontage means the distance, measured in a straight line, along any one wall of the business premises facing and providing public access to the separate premises of the business. Where a business has entrances allowing public access on more than one frontage, wall signs may be erected for each frontage, but the display area maximum shall be calculated separately for each frontage.
- E. The provisions of NMC 10.10.085 for signs in commercial, industrial, or marine districts apply to shopping centers and multiple business properties except as modified by this subsection.

10.10.095

P1, P-2, and P-3 Public Districts

In public zoning districts, signs are allowed subject to the following parameters:

- A. The maximum total area for roof and wall signs is two square feet of display area for each lineal foot of street frontage.
- B. The maximum total area for projecting and freestanding signs is one square foot of display area for each lineal foot of street frontage. Projecting and freestanding signs having two sides facing in opposite directions shall be counted as having only one face, which shall be the larger of the two faces if not of equal size. Only the larger face of back-to-back signs within two feet of each other and signs on opposite parallel ends of awnings shall be counted towards total maximum size.
- C. Each street frontage of a property shall be limited to not more than 2 signs, only one of which may be other than a wall sign unless there is more than 200 lineal feet of street frontage, in which case one additional sign is permitted. Where a property contains an electronic message sign, only one freestanding sign is permitted.
- D. Window signs shall not exceed 16 square feet in area. Window signs are not included in the calculation of total display area.

E. Electronic message signs on properties with no more than one freestanding sign of up to 20 feet in height, provided the electronic message sign:

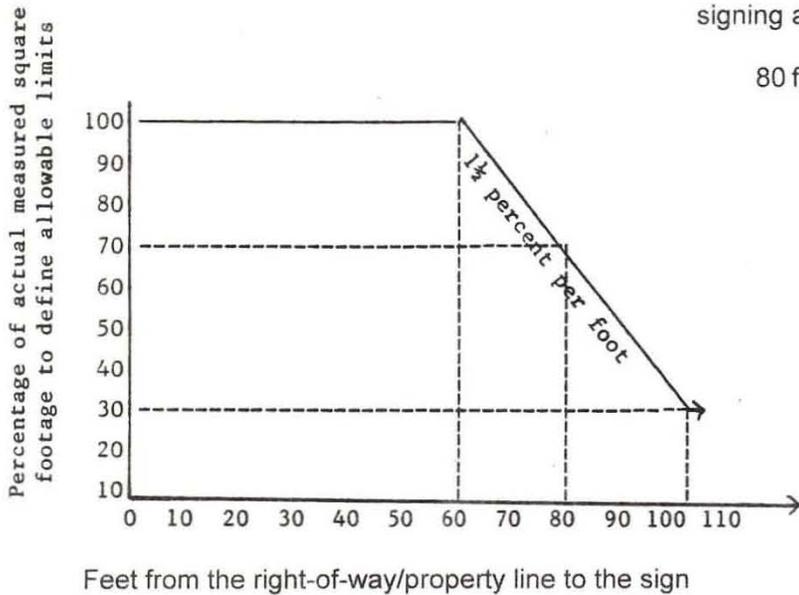
1. Is less than or equal to thirty-five percent (35%) of the total allowable sign area per sign face.
2. Displays text, symbolic imagery, or a combination thereof for a period of time in excess of (5) minutes before a change occurs. This provision does not apply to the display of time, date and temperature information.
3. Changes the entire display text, symbolic imagery, or combination thereof within two (2) seconds.
4. Is turned off between the hours of 11 p.m. and 6:00 a.m. unless the sign is associated with a facility that is open to the public, in which case the sign may stay illuminated until the facility is closed.
5. Does not contain or display animated, moving video, flashing, or scrolling messages.
6. Contains a default mechanism that freezes the sign in one position if a malfunction occurs.
7. Automatically adjusts the intensity of its display according to natural ambient light conditions.
8. Adheres to a maximum night-time illumination standard of 0.3 foot-candles as measured from a distance, in lineal feet, from the sign that is equivalent to the square root of the display area, in square feet, multiplied by 100.

F. Mural signs.

G. Each street frontage of a property shall be limited to no more than 200 square feet of display area for all non-exempt signs other than mural signs.

H. Notwithstanding any limitation on total sign area, each separate building is allowed at least 50 square feet of display area.

- I. The maximum display area allowed shall be adjusted based on distance from the nearest property line, using the graph below:



E.g., 60 foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable signing area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable signing area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable signing area.

e.g., 60-foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable sign area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable sign area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable sign area.

- J The maximum height of all signs other than mural signs shall be no greater than 30 feet above grade.
- K. The maximum horizontal or vertical dimension of the display surface of any sign other than mural signs shall not exceed:
 - 2. Thirty feet for freestanding and roof signs on properties adjacent to Highways 101 or 20 that are located at least 125 feet from the center line of the highway and at least

76 feet from the center line of any other street.

2. Fifty feet or the width of the wall for wall sign horizontal dimension.
3. Except as otherwise provided by this chapter, the maximum horizontal or vertical dimension of any display surface shall not exceed 20 feet.

10.10.100 Construction and Safety Requirements

All signs shall be well constructed in accordance with all applicable codes and requirements of law and shall be maintained in a safe, neat, and clean condition. Signs that are not in good repair or condition through deterioration or other reasons are prohibited and shall be either repaired or removed. If not repaired or removed by the owner, signs that are not in good repair or condition may be abated as authorized by this code.

10.10.105 Dangerous and Abandoned Signs

- A. Any sign or structure that is a nuisance or a dangerous structure may be abated as provided by city ordinances governing nuisances and dangerous structures. If the city manager or building official determines that any sign or sign structure constitutes an immediate threat, danger, or hazard to life, health, or property, the city manager or building official take any action necessary to immediately abate the risk, pursuant to the police power of the City of Newport and without prior notice.
- B. Any sign that has been abandoned or reasonably appears to be abandoned constitutes a hazard and may be abated as provided in Subsection A.

10.10.110 Removal of Signs in Rights-of-Way

Any unauthorized sign in a public right-of-way may be removed immediately without notice by the city and removed to a place of storage. A notice of removal shall be sent to any owner of the sign known to the city, notifying the owner that the sign will be destroyed unless the owner claims the sign within 20 days of the notice. If the owner is unknown to the city, no notice is required and the sign may be destroyed if unclaimed after 20 days from the date of removal. No sign removed from the right-of-way shall be returned to the owner

unless the owner pays a removal fee to the city in an amount set by Council resolution. If the city reasonably estimates the value of the sign materials to be less than \$10.00, the city may immediately dispose of any sign left in the right-of-way without notice.

10.10.115 Remedies

A sign erected or maintained in violation of this chapter is a nuisance and a civil infraction. The city may pursue any one or more of the legal, equitable administrative and self-help remedies legally available to it. All remedies of the city, both as a governmental body and otherwise are cumulative.

10.10.120 Nonconforming Signs

- A. The purpose of this section is to discourage nonconforming signs and to work toward eliminating or removing nonconforming signs or bringing them into conformity with this chapter. Nonconforming signs shall not be enlarged, expanded or extended, nor used as grounds for adding other structures or signs otherwise prohibited.
- B. A nonconforming sign may not be altered as to size, message, or construction, except that common and ordinary maintenance to maintain the sign in a good and safe condition is allowed, including incidental structural repair or replacement.
- C. If a nonconforming sign is damaged or destroyed by any cause including normal deterioration to the extent that the cost of repair shall exceed 50% of the replacement value of the sign, the sign may not be repaired or restored, and may be replaced only by a sign conforming to the provisions of this chapter.

10.10.125 Content and Interpretation

This chapter and Chapter 10.15 do not regulate the content of signs and shall be interpreted as not regulating content. These chapters shall be interpreted if at all possible to be consistent with constitutional protection of expression, and any provision that unconstitutionally restricts expression shall not be enforced, and the remainder of the provisions shall continue to be applicable and shall be applied constitutionally.

10.10.130 Variance Requirements

Any person may seek a variance to the numerical provisions of this chapter or of Chapter 10.15 by filing a written application. The procedure and process applicable to zoning adjustments and variances (including but not limited to the notification process, public hearing process, conditions of approval, time limitations, and revocation of permits as applicable for the type of adjustment or variance requested) shall be followed. The fee shall be the same as for a zoning adjustment or variance. The criteria for the sign variance shall be as specified below. In addition to the requirements for submitting a zoning adjustment or variance, a sign inventory including the location, type, and size of each sign on the property shall be submitted with the application.

- A. All sign variance applications that propose to increase the number or size of signs or propose a variance from any other numerical standard shall be determined by the Planning Commission using the zoning Type III Variance procedure, based on a determination that the proposed variance is the minimum necessary to alleviate special hardships or practical difficulties faced by the applicant and that are beyond the control of the applicant.
- B. All sign variance applications based on a change in a sign or signs that decreases but does not eliminate an existing nonconformity shall be determined by the community development (planning) director using a Type I Adjustment procedure, based on a determination that the proposal will result in a reduction of the nonconformity without increasing any aspect of nonconformity.

10.10.135 Violations

A violation of this chapter or of Chapter 10.15 is a civil infraction, with a civil penalty not to exceed \$500. The penalty for a second or subsequent violation within two years may be up to \$1,000. A violation occurs on the date of the occurrence of the act constituting the violation. Each violation is a separate infraction, and each day in which a violation occurs or continues is a separate infraction.

(Chapter 10.10 was enacted by Ordinance No. 2037 on May 21, 2012; effective June 20, 2012.)

Minutes
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
Monday, November 10, 2014

Commissioners Present: Jim Patrick, Mike Franklin, Lee Hardy, Rod Croteau, Bill Branigan, and Bob Berman.

Commissioners Absent: Gary East.

City Staff Present: Community Development Director Derrick Tokos and Executive Assistant Wanda Haney.

A. **Roll Call.** Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 6:00 p.m. On roll call, Hardy, Berman, Croteau, Patrick, Franklin, and Branigan were present. East was absent.

B. **Approval of Minutes.**

1. Approval of the Planning Commission regular meeting minutes of October 13, 2014.

MOTION was made by Commissioner Croteau, seconded by Commissioner Hardy, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

C. **Citizen/Public Comment.** Croteau noted that John Rehfuss recently passed away. Rehfuss was a long-time member on the Planning Commission and a former City Councilor. Croteau said he would be missed. Audience member, Mark McConnell, noted that there would be a Saturday service at the Presbyterian Church.

D. **Consent Calendar.**

1. **Final Order for File No. 5-CUP-14.** Approval of a final order for a conditional use permit as submitted by Wyles Sanders (Rebecca Lytwyn, Oregon Coast Bank, authorized representative) (Oregon Coast Bank, property owner) for a daycare facility located at 125 NE Lincoln St Unit B to continue operation in an R-3 zoning district. The Planning Commission held a public hearing on this matter on October 13, 2014.

Since he felt that the action had been fully vetted, **MOTION** was made by Commissioner Croteau, seconded by Commissioner Branigan, to approve the final order for File No. 5-CUP-14 as presented. The motion carried unanimously in a voice vote.

E. **Action Items.** No items requiring action.

F. **Public Hearings.**

Patrick opened the public hearing portion of the meeting at 6:04 p.m. by giving the statement of rights and relevance applying to the hearing on tonight's agenda. He asked the Commissioners for declarations of conflicts of interest. Nothing was declared. Patrick called for objections to any of the Commissioners or the Commission as a whole hearing this matter; and none were heard.

1. **File No. 3-Z-14.** Consideration of legislative text amendments to Title X (Signs) of the Newport Municipal Code (NMC) to create standards for the placement of electronic message signs on public properties. Existing provisions for signs have been clarified and consolidated, and a new subsection created that is specific to public-zoned lands. This is a general hearing with no adoption. The Commission will forward a recommendation to the City Council on this matter.

Patrick opened the hearing for File No. 3-Z-14 by reading the summary from the agenda. He called for the staff report. Tokos noted that included in the Commissioners' packet was a markup of Chapter 10.10 of Title 10, the City's sign code. He trusted that the Commissioners had a chance to take a look at that. He said that for each section or subsection where changes are being proposed, he included staff explanation. He said that this issue came about as OCCA, whose representatives were present, became interested in upgrading the existing signs at the PAC so that they are electronic and can self-change, and they are not having to change out the boards. Their intent is to use the existing structure and just swap out the fascia area and put in an electronic sign that complies with the provisions outlined here. Tokos

explained that the City Council elected to initiate this legislative process. Previously the Planning Commission has met in work session and talked about this. Effectively from that discussion, Tokos put together this markup. The City's sign code never had an expressed section for signing on public-zoned properties. There were general standards for these signs in commercial and industrial zones; and they were not allowed in marine zones, residential districts, and in the Nye Beach Design Review District. Tokos put together a public category and consolidated these provisions from the different categories. Also, there was conflicting language; and this is an opportunity to clean that up. This is going with the language that was in the specific commercial area as opposed to the generalized. There were some typographical errors that were cleaned up as well. Effectively what this does is allows the same type of electronic message sign allowed on public as currently allowed on commercial and industrial. The Planning Commission put the existing sign code in place in 2012 at the request from the developers of Walgreens. This amendment would allow these signs on the PAC property, which is public-zoned even though it's in the Nye Beach Overlay. It would also allow them in other public areas in Nye Beach if someone wanted; although, that's unlikely because the City has control over a lot of those public properties. Tokos said we still don't have anything quite resolved with ODOT at this juncture, so it's not viable to try to extend these signs onto State rights-of-way where the City's entry signs are located. We can continue to work on that conversation with the State; but that will take some time. The provisions for management of State rights-of-way have been tailored for traffic safety kinds of things. The rules currently don't allow for a message sign that the City maintains; and he's not sure the State would go there, either.

Patrick noted that section 10.10.045 says signs are prohibited if they include any single light bulb that creates more light than a 60 watt incandescent bulb. He said you can't get those bulbs any more. He thought this should be changed just to lumen standards or something. He also said there should be some thought about LED signs, particularly those totally electronic, and how much light those are putting out at one time. He said you can amp those up to a point where they will blind you. He said some along I-5 are super bright; but they're way back so it's not a problem. If they were next to the road, it would be another story. He thought for that standard, we should change "60 watt" to so many lumens for a single bulb. Tokos said he thought that was covered in here somewhere; but Patrick said he didn't see anything. Patrick said then you could use whatever kind of bulb you want. Tokos said no, Patrick was right. What Tokos was thinking of was the adjustment to ambient light conditions. That means it has to change; it can't be as bright during the day as it is at night. There are no numbers attached to it.

Branigan noted that on page 17 it talks about the height being no more than 20 feet except in the marine zone and Nye Beach. Then three pages later it talks about the height being 30 feet. Patrick said the normal height is 30 feet; but electronic signs are 20 feet. Tokos said that was what the Planning Commission put in place as sort of a carrot.

Croteau said that page 21 has to do with illumination of signs during business hours; or off when closed. He noted that even though the PAC ticket office is closed, there may be times from the public information point of view that you want the sign on. He said that also would be the case with the Chamber and maybe the Fairgrounds as well. Tokos said that's a good point. These are not quite the same as a business. Public-zoned lands don't even have a business. Branigan said when you imagine the PAC, you would assume the hours of operation are essentially when they will have some sort of activity; and they would want that sign illuminated. Tokos said he has to talk to legal counsel about that because we have to be careful how we differentiate between different activities and what standards apply; why a business has to have their sign off when something on public land doesn't. Patrick thought this was kind of a dumb requirement anyway. He said if they have a regular sign lit by light bulbs, then it's always on. It's only electronic that has to be off when that business is closed; any other sign is on all of the time. Tokos said a gas station will shut down electronic messaging when they're closed; and it just goes dark. It saves them money. Franklin said a hotel would keep it on all night. Tokos said, but they would be open. Berman asked what business that phrase is referring to; is it the business whose property it's on or the business advertising on the sign. Tokos said the business on the property where the sign is located. Berman asked what if it's on a vacant lot. Tokos said that's a good point. We haven't ran into that circumstance. Maybe it's not even permitted; there's no business there to go with it. We haven't had a request for that yet. Patrick asked what about billboards. Tokos said they are prohibited because if they go electronic that would be more than 50% of the value of the billboard, which would require they be torn down. Billboards are phasing down. Berman said the PAC maybe is visible from some nearby residences, so even if we allowed it to be on all day or evening; we wouldn't want it on all night. He said there should be some way to recognize that there could be some adverse impacts on residences. Tokos thought the business thing should change. He can tailor it so they're not illuminated during hours the facility is closed and get rid of the reference to business. Then we're treating it exactly the same as we are commercial and industrial right now. Croteau said he can see that in the context of the PAC, but not the Chamber of Commerce. Even though they're closed, they're making announcements; or the same for the Fairgrounds. Tokos said if you want to do that, then how does that play with commercial and industrial. Do you want to lift that restriction from commercial and industrial then? He said part of it is the light pollution thing, too. Croteau said he would like to see some sort of restriction; but we need some sort of flexibility for the type of operation that is advertising. He doesn't like all-night illumination either. Maybe a way to work it is

have certain hours that electronic signs have to be off; certain hours on Highway 20, late at night at the PAC. Tokos said it might not even be an advantage to the Chamber to have it on early in the morning. Who's on the highway at that point? Berman asked if Walgreens is open 24 hours; and that was confirmed. He said, so that sign is on all night long; and Tokos said yes as long as they're open. Franklin said his fear is that, if this goes and we allow it to be 24 hours, then you have one in Nye Beach down on the turn-around by the VAC and they go 24 hours under this same code. Croteau said maybe we should liberally interpret business hours or have it coincide with those in operation or a reasonable time period. If the ticket office is open for example; you're open. Or if it's open for rehearsal; it's open. Franklin wondered if there's a time the office is actually staffed.

Proponents: Mark McConnell, 4915 NW Woody Way, Newport. McConnell said that their contemplation is to have the sign on during the daytime when there is a performance that evening for sure and then until the box office closes; which is typically after the show's curtains. On Saturday and Sunday when there are still tickets available, they would want people to know what is happening that day. The box office is open 24 hours a day for online ticketing; but they don't want to leave the sign on all night long. There is no reason to have it on in the neighborhood after 10:00 p.m.; if it's an 8:00 p.m. curtain, then maybe 9:00 p.m. He said it's easy to set a time limit on it. As far as the brightness, these signs have a lot of control over that. They can adjust to the daylight. McConnell thought it was a great idea to have some kind of lumen setting or some kind of brightness control; some sort of limit that it can't be brighter. He noted that he had given the Commissioners several pieces of literature. One was the 2013-14 OCCA annual report, which gives a really good feel for how important the PAC is to the community and justifies your language that says you need to show that it has community importance and value in making the change. He said some of the key things in that report is that there are over 170 performances a year. There were probably five or six different events within the last two weeks. Frequently they have HD performances, there was a piano teacher's recital, there was the symphony, etc. There are three to five events each week that they have a need to advertise and market. He noted that the other two color pieces of literature give an idea of the extent to which they have been working on their capital campaign. They actually started in 2009-2010 with a lot of neighborhood and PAC-user community sessions, charrettes, and developed a list of things they wanted to do to the PAC to bring it up to the modern day and age. The PAC is 26 years old. Signage was one of the big issues. When it was first built, there was no external signage at all. The Chamber had the sign that blew over and got replaced not too long ago down by the Armory. He went down and measured that and copied it. They put it down on Olive Street with 4' x 8' signboard in it. There had been no plan for signage whatsoever. That sign lasted there until the monument sign was built during the 90s during the Nye Beach Urban Renewal project as part of those Urban Renewal dollars. They've had that sign since then. McConnell referred to the photo of the current signage (the one with the typewritten notation), which is the monument sign that was created. He said this has two slots for 4' x 8' sheets of plywood with signage applied either by hand painting or vinyl. There is only room for two events; so there's quite a bit of shuffling that happens; who gets to be up on the sign next and what order will they be in. He said to turn the page over, and this is looking at the electronic version of the exact same slots. These are large screens basically that you can program with a computer. You feed in electronic information and send the message out from the building. Those can change every five minutes per the ordinance. They can advertise lots of different things coming up. That is the concept. He noted that some of this material is just to show that they've done quite a bit of fundraising already. They have recently received a large grant. They are certain by the end of the year that they will have money in hand to do this.

McConnell said an example of what happens for people who come to the community is that a lady walked in just the other day and said that they would be here for two nights and would love to come see something and asked what was going on here. McConnell said it's really difficult to tell right now in the building. They also anticipate having a TV-type screen in the main window of the building saying "now playing" and what's coming up. That also would be very useful to people. He said it's really hard to get the right information right now coming up to the building. He said that's their goal.

Branigan asked if they wouldn't want to have those electronic signs on, particularly in the summer when the tourists are in town, during the day besides when there's an event. McConnell thought whenever the box office is open. The office is occupied from 8:00 a.m. on. The box office opens at 9:00 a.m. and is open until 5:00 p.m. or so. If there's a performance that evening, the sign would stay on; and the box office is manned one hour before curtain. So, yes they would want to have them on seven days a week during the daytime so people could plan for the next time.

Katherine Rickbone, Executive Secretary for OCCA. Rickbone said that in addition to what McConnell has been saying, just today they had an issue of more things happening at your PAC than there is space to advertise what there is. It really hampers their ability to function and to properly market things. You just have the two slots, yet there is so much more going on. She said something else they have noticed in addition to McConnell's comments about someone coming in and asking what's going on, is they have people at box office time that if they happen to see what is going on out in front, come in saying they saw the sign and would like to come. They hear that on a fairly frequent

basis; that people paid attention and looked at that signage out there. Yet they have the ability to advertise only two things when at times there may be five events in one weekend. She said the other thing too that is nice about this is being a 4-way stop out there, people will and do need to stop. They have the opportunity to look at something. They're not in motion, so she doesn't think it's a hazard there. They are already stopped.

There were no other proponents present wishing to testify.

Opponents or Interested Parties: There were no opponents or interested parties present wishing to testify.

Tokos said that one option the Commission has if they are so inclined is to continue the hearing to the 24th with direction to staff to bring forward an ordinance that encapsulates the changes discussed mainly on the lumens issue and some sort of fair accommodation regarding the shut off. Then on the 24th, the Commission could take testimony on those or any other items should anyone wish to provide testimony and then make a decision on the ordinance at that time. Patrick noted that all the Commission is doing for now is making a recommendation to the City Council.

Branigan had a question about electronic signage on vehicles. He said we didn't really address that. Tokos said he didn't know if we could do anything about moving vehicles; that starts to get under DMV rules at that point. We can address it if it's parked and effectively serving as a monument sign. Branigan said it could be parked on a vacant lot or on that particular business' lot. Patrick said it's kind of the same problem you have with murals. If you regulate what's on the side of a car, it's the same as regulating what is on the side of a building; we can't do that according to content. Branigan said he wasn't thinking so much of a car as somebody having a flat-bed trailer. Patrick said what people do when you can't put a billboard up is go buy a cheap van and paint on the side of that and park it; and there's nothing you can do about that unless you have some sort of parking ordinance that says you can't park something on your property.

Berman noted that in two spots there's a little chart in there about setbacks and allocating square footage to signs, but then there's also text or examples of things pulled off that chart. Is it the chart that's in the ordinance? Why are there examples? Tokos said the examples are in there just to explain how the chart is to be applied. It essentially has a scaled height based on the setback from the property line. Patrick said it is kind of backwards. He understood it because he remembers working on it; but it's not exactly the way he would like to see it. He said it's based on the language. What it means is when a sign gets farther away, you only count 35% of it. Berman said he understands what it means but asked if it isn't redundant to have both the example and the chart. Patrick said the chart's to help explain it. Croteau thought that the examples are worth it in that the chart itself is trying to help people figure out the slope and how big a sign can be.

Tokos said to Branigan's point, the electronic messaging sign right now is limited to freestanding signs, which under the definition means it has to be permanently attached to the ground. So if it was a vehicle that was parked, it would be tripped up under the prohibited sign provisions.

Patrick thought that if Tokos makes the language that the entity is either occupied or not in operation, that would allow the Chamber to make the argument that they're open 24 hours a day on the internet. Tokos said that would allow any business to do that. Patrick noted that they also have the 24-hour kiosk outside. Franklin asked if in Nye Beach we are at least allowed to reign it in to certain hours of operation that's allowed in Nye Beach. Tokos said he may be able to come back with examples of language where we are able to double it up either when the business is open or a fixed timeframe, whichever is more permissive, and just do it that way. That way the hotels don't get hit because they're open 24 hours, yet it's an accommodation for the Chamber of Commerce but doesn't allow it at 2:00 in the morning. Patrick asked Tokos to bring back some options for the Commission to look at.

MOTION was made by Commissioner Croteau, seconded by Berman, to continue the hearing for File No. 3-Z-14 to the next meeting, in order to allow Tokos to look into this and provide some options to the language for the ordinance as discussed. The motion carried unanimously in a voice vote.

G. New Business.

1. Update on progress of Housing Study. Tokos noted that he included in the packet the status of where we are on this right now. This is the work we are doing in concert with the County and OSU. He said the Commissioners have the November 3rd information, which was basically the second of three meetings that are being held. This work is an effort to help OSU position itself to get the balance of its funding that it needs in order to do a 100,000 square foot research classroom addition at the HMSC campus proper, which is part of their 10-year plan to increase student enrollment at Hatfield from 50 to 500. The study is looking at the impact of adding 500 students to Newport given

our current housing condition; what would be some appropriate sites where student housing could be constructed; what are some of the financing tools that can be utilized to help make this happen; and what is the City's potential role as a partner with OSU, the development community, etc. in helping to ensure student housing actually happens in a way that is proactive not reactive because we have 200 students now displacing our workforce that otherwise needs the housing to work in Newport in our tourist trade, or fish processing, or any other number of employment opportunities. There is about one more meeting on this; and that will be on November 19th, where we will discuss policy options that will go in there along with the balance of what you are seeing right now; which are things like the financing tools and the buildable lands. Right now Wilder looks like the most likely location for student housing. He thinks there will be a clear recommendation in the report that the City of Newport wants to see OSU address this up front and not leave this to the community to solve. OSU has indicated that they can take a number of different approaches. They may elect to do anything from constructing the housing themselves and managing it, to allowing it to be a private venture with limited university involvement. There are a number of different options. He thought the one that's probably most attractive would be an option that includes some active management. It doesn't matter if it's actually built by OSU, but to make sure there's some active management by OSU to ensure space is available here and back in Corvallis for those students that are trying to navigate between courses in a given academic year.

Tokos said this is not strictly a student housing conversation. The tools you see in here, such as potentially revisiting our SDC methodology to see if it needs to be structured in a manner to make it more attractive for multi-family development; if that's an obstacle. He doesn't know that it is per se; but that's one area potentially that the City could be an active participant. Another tool would be the property tax abatement program, which we're allowed to put into place by State law. It's whether or not the City wants to pursue that in some form in consultation with the County and the other taxing entities. He said this report's not going to solve some of these questions. It will lead to policy recommendations on what should be looked at further as opposed to what should probably be dropped and not looked at further. For example, he would be surprised if there's an appetite to look at really digging into CDBG or leveraging HUD resources; whereas the property tax exemption if crafted properly might be something because that's a little bit more limited role.

Tokos said that is where the conversation is at right now. This will end up in a final report before the end of the month. The policy recommendations will come back before the Planning Commission as amendments to the Housing element of the City's Comprehensive Plan. He wanted to make sure the Commission was aware of how this is progressing. He noted that Hardy is on the stakeholder group. He asked if there was anything she wanted to add. Hardy thought the group has been presented with a variety of assumptions based on housing trends, housing needs, and tenant behavior that may or may not be entirely accurate or broad-based. She said the college representatives are more attuned to student behavior rather than public behavior. If those assumptions drive the policy, they need to be carefully handled. She understands that Wilder is looked at being the more likely location for such development either in a private/public partnership or solely private; but that was based on the fact that they assumed most students don't have cars. She said she hasn't seen any demographics yet. They were talking about in the first meeting surveying their students to get some feedback on that. She's not sure those policies could be soundly based without more demographic information. If you're talking about developing student housing from the City's standpoint, she believes there's a risk assuming that the City would participate in that but not necessarily participate in workforce or affordable housing. She said, so if the City's going to be making policy recommendations, she thought it should be broader-based. Otherwise, you may get some push back. Tokos said that he expects any one of those, looking at the SDC methodology for example, would not be specific to student housing; it would be multi-family in general. He said the same for the property tax exemption option. He said that Hatfield has a survey they have been doing with their graduate students; which he believes they will get to ECONorthwest prior to the final meeting on the 19th.

Croteau said he thought there was another issue in this project. It will extend over a long period of time, and it is going to impact workforce housing. He thought we need some sort of consistency, if not an overview or oversight; some continuity. Beyond the ad hoc working group, what do we have that's going to centrally focus, assemble, and carry forward? What happens after the ad hoc group dissolves? What about two years from now when things are rolling off the tracks? Tokos said the thought here is this study will lead to some recommendations in term of policy options that need to be explored. We will take that through and amend the Comp Plan, and it becomes kind of a work program for the Planning Commission and the City Council. Croteau asked if Tokos expects it to get that formalized. Tokos said that he thought it will get that formalized for anything the City's directly involved in. There's a lot of this that the City's not. Whether or not OSU makes it a priority to acquire land now as opposed to five years from now; how they approach construction; he doesn't know that we will be directly involved in that. Right now what we're doing is helping them have a road map for how they can make it work so they can explain that to the Legislature as they try to get their funding together. But beyond that, he doesn't know if we have a direct role. Croteau asked, we don't have housing authority so to speak, then to overview this process. Tokos said no, the City has the ability to help make sure there is sufficient land available and that it's located in the right areas. We can be helpful in that regard

with Wilder because they're going to have to change some of their planned development rules to accommodate this. So, that would come before the Planning Commission and the Council. We can look at how we impact the cost of the development, either through SDCs, or tax abatements, or things of that nature; or we could get directly involved in the financing and the construction of multi-family through HUD programs. He just doesn't know if there's an appetite for that. That would beg the question, who's going to provide that oversight. If we're going to create a housing agency is it going to be housed at the City or at the County; how is it going to be staffed; how is it going to be funded; all of that. Tokos said he doesn't know if there is an appetite to go that far. Hardy said that may take further future-reaching vision that isn't limited to this relatively isolated situation. Tokos said that's a good point; and he thought it might need more pain in the community, unfortunately. He said the jurisdictions you see go that way get to that point because they have business owners coming in saying, "we have to do something proactive because we can't hire anybody anymore" because they can't afford to work at the salary they can pay them because they have to live 30-40 miles away. Croteau said that's an issue we would all like to avoid if we can. Hardy said the other thing that was very clearly made a point of is that OSU has no plans to expand parking at this point. She didn't know if that means they've taken it off the table or they're going to have to go to the Legislature and say this is what the data collection shows we are going to need for parking if we're going to do this. She said so then they're relying on public transportation and cycling over the bridge in 100-mile-an-hour winds. Tokos said this has been helpful in some respects by forcing OSU to plan for and get a handle on how they will pull this off. They have a grant that's half of the funding for that new \$50 million expansion. So, they have the fire behind them right now.

Franklin said up in Wilder you have the R-2, and then is it in the orange area on the map, the high density, where they will put multi-family. Tokos said they have been looking at a couple of different spots. The most-attractive is in the R-2. It could be jostled around a little bit. There is another area, the BGB site, that is south of Wilder and is not even in the City yet. It's a parcel right below the community college that is inside the UGB. It is forested. The issue with that parcel is that it would involve extending Harborton quite a ways to get to it, so it would be more expensive. It is a larger site; but it's still more attractive up in the northwest corner of Wilder in the R-2 zoning. Patrick said we could make a case for changing that zoning designation to R-4. Tokos said there are no issues there; we'd just have to work through the planned development process. He noted that Bonnie Serkin with Landwaves is part of this planning process. So, they are in the loop. He said one thing OSU really needs to do is get motivated to purchase land. If they're serious about this, they need to do that sooner than later because there's only a limited number of sites in South Beach that really are suitable. We have so much of it that is in the tsunami inundation zone; and you can't put student housing in that area.

Berman said it strikes him that it's important not to focus a majority of the effort in student housing; there are specific plans for that. There is the ongoing need for low-income and workforce housing. It has been a problem, is a problem, and will continue to be a problem. Rather than focusing on this one opportunity, the solution should be comprehensive. Tokos said that is why that property tax abatement program might be something we might really want to dig into. We don't have the luxury of being in the valley and being able to add flat developable land. We just don't have it. So, land prices are high. With that property tax abatement there is a lot of flexibility in how jurisdictions can tailor it. Maybe that's worth a hard look to see if that is one way to make it pencil out. You can put strings attached to that. It's not just a give-away. We can say, "if you want the 10-year property tax waiver, then a certain number of your units have to be offered in a certain range." He said Hardy made a good point, we need to get more feedback from those in the construction industry about what is the issue here. Beth with ECONorthwest is already talking with some commercial brokers over in Corvallis, and they're saying it's land in Newport; it's just expensive because there's just not a lot of developable land that doesn't have major constraints. You have to deal with those, and that drives up the cost of construction. Hardy said you have to consider how a student that's going to be here three to four months will be able to compete in the private housing market. That's where OSU's involvement is critical because they can facilitate the moving back and forth and maintaining occupancy if it happens to be a private owner. Anybody in their right mind will screen in preference for a longer-term tenant. Turnover is what costs you. Croteau said some component of this almost has to be dormitory housing. A graduate student is here for a few months, they go back to take a course, then they're back here again. You can't manage that in a normal rental market. Patrick said it didn't sound like even the graduate students were here the whole year; maybe six months at a time. Croteau said we have to get a good idea of the demographic. Tokos said they're starting to frame it; they don't have it fully fleshed out, though. He said it's a substantial number of undergraduates, though; it was several hundred. Hardy thought 75% were undergraduates. Croteau said that's a chunk of temporary people. Tokos said these are juniors and seniors; but, again, how much of that's full year as opposed to coming out here for a quarter and then go back to Corvallis. He doesn't think they've really fleshed that out. They're still not sure how their hiring program will work and how quickly they can ramp up and at least start to offer the range of courses they're going to need to offer. Patrick asked Tokos to keep the Commission up to date.

H. Unfinished Business.

1. Review changes to the Floodplain maps. Tokos said the Commissioners have one map. He got this from the FEMA folks. They gave us a sneak peak at the maps before they made them public to see if we had any major issues. We raised three issues with them; this being one of them. Other jurisdictions raised issues as well. FEMA kicked back an email, and this is the only one they made changes to, which is Nye Beach; and they scaled it back. He thinks this is actually more realistic than what they had depicted. Now pretty soon they will put those out as a preliminary draft that goes public. It will be a public preliminary draft with a formal comment period as opposed to the informal comment period that we just had. That will be another opportunity for us to raise issues on the other sites. The other sites needing clarity include the Neolha Point area in South Beach, which has flooded in the past largely from that tributary immediately to the south flowing off the ridge there he thinks more so than the Bay. They haven't accounted for that; and by scaling it back, they took a good chunk of Neolha Point out the floodplain. Then those property owners will not carry flood insurance; and the problem is it's going to flood again. The other one has to do with Big Creek; and they took a bunch of homes out there. He thinks that's just flaws with the original hydrologic studies, which they're still working off of 1970's hydrologic studies. They have new topo; but their whole understanding of how Big Creek flows and floods is all based on 1970's data. So, it doesn't quite sync up. He said we will have a chance to further probe those or any other issues that may come up when they get the preliminary maps out. But, they did fix the Nye Beach. Croteau asked if they will have a public hearing on this one. Tokos said we will have to take this through a formal adoption process. They'll have a preliminary release for comments; we make those comments; and then they'll have a final set that we have to adopt through a formal process. It's an incremental process. Patrick said, we won't be able to change the maps, will we. We'll basically have to adopt their maps as is. Do we have the ability to actually change the maps? Tokos said he will have to look into that. Could we adopt a set of maps that are 99% of what they want with some revisions; he doesn't know if they would accept it. He said we don't have a lot of flexibility there. There may be an appeal option where we can appeal their determination somehow or pursue some sort of map revisions after adoption. He thought there may be some avenues to protest.

2. Status of Nye Beach Design Review revisions. Tokos wanted to update the Commission on how this is moving along. Basically at this point, SERA Architects will do a refresher of the design guidelines; it's a more thorough set of work than what they did initially, which was just a quick look to address a set of questions that the work group had. Now, based on their initial assessment, there are a number of things that we discussed as a group that are needed, which are a refreshment of the guidelines. They will get started on that; and we should have a draft that we can take back to the group by mid-December. Tokos noted that there's no consensus in terms of some of the things folks want to see; in particular, mass and height. His hope is that SERA's work will better define that so that when somebody says they don't like big buildings, we know what they're talking about. Right now too much of the conversation is too hard to get your arms around. This will start to frame that a little bit better and should produce a new set of guidelines that can be adopted with general consensus. But, there may be other things to address that the Commission and Council will have to revisit because the work group's not going to get to consensus on it. Croteau asked if we're getting additional input from the public. Tokos said not at this point. Croteau said, so what they have is just informal. Patrick said eventually we'll have a hearing on it. Tokos said it will come back to the Commission. Patrick said, and then you get the public input. Tokos said with the design guidelines, there's not going to be the opportunity for us to make wholesale changes there. So, whatever we get from SERA, maybe with one round of revisions with the group, is what we're working with. It will be editable; so if the Commission doesn't like something, he can go in and change it. A lot of that's going to be cleaned-up verbiage and better graphics than what's in there right now.

I. Director's Comments. Tokos didn't have anything above and beyond what's already been discussed.

1. Berman asked if Tokos had an update on the new north side Urban Renewal District. Tokos noted that he did a presentation at the Chamber of Commerce luncheon on Friday on the formation of a new URD. We have met with all of the taxing entities at this point of time and have asked them to provide feedback on that, which we haven't received yet. He will probably have to ask for that again through a formal process. He said it looks like the City Council would like to get going with this around the first of the year. He noted that the Commission hasn't had a joint meeting with the City Council for a while; and they were thinking this might be a good topic to meet on to kind of map out the public process on this. He was wondering whether the Commission would want a formal summary of the feedback from the taxing entities in advance of that meeting. He was thinking that might be helpful. He said maybe he can set that up for the work session on November 24th. He said then the Commission can get a summary on that. Maybe he will also have some additional thought on a joint meeting with the Council.

Berman said there were three options and asked if that had been narrowed down to one. Tokos said no; the Commission will have the opportunity to make that recommendation to the City Council if you want to narrow it down. He said basically the taxing entities have said thank you and had some questions about projects. A couple of them have said they need to really digest this and get back to us to say, "this amount's okay, but above and beyond

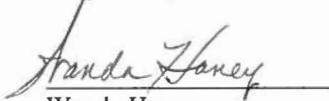
that is going to really pinch us near term;" that kind of feedback. They have to sit down and think it through. We haven't received that kind of feedback yet from the County, the Health District, and the Community College.

Tokos noted that the City Council as the Urban Renewal Agency is going to be meeting on November 17th to make a final decision on whether or not to acquire a property in South Beach next to the intersection of 35th and 101 (the Schones' property with the old Flashback's building). There's a whole bunch of South Beach construction projects rolling out next year; Abalone extension, 35th, Brant, 27th. All of that work is consistent with the Coho/Brant plan that the Commission saw and participated in where we did that refinement plan to identify specifically how the work should happen down there. He said the plat is just about recorded; OMSI's signing now, and Dick Murry and Investors XII have signed off. So the plat is making its way to get recorded. It's not slowing anything up because we're not going to break ground for construction until next spring. So, it's still working timing-wise. He said that's the other Urban Renewal District.

2. Tokos said the City Council is having a hearing on the 17th on the business licenses as well. He doesn't think they are going to take action on the 17th. He thinks they will kick it over to after the first of the year because they want their new City Attorney to take a look at it before anything is acted upon. Croteau asked if anything happened between the working group's recommendation and now. Tokos said there were some slight changes that came out of Spear Hoyt, our contract attorney. The Council wanted them to take a look at it; so there were some minor changes, but nothing major. There were some tweaks here and there; mostly for clarification.

J. Adjournment. Having no further business to discuss, the meeting adjourned at 7:05 p.m.

Respectfully submitted,


Wanda Haney
Executive Assistant

Draft Minutes
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
Monday, November 24, 2014

Commissioners Present: Jim Patrick, Mike Franklin, Lee Hardy, Rod Croteau, Gary East, and Bob Berman.

Commissioners Absent: Bill Branigan (*excused*).

City Staff Present: Community Development Director Derrick Tokos and Executive Assistant Wanda Haney.

A. **Roll Call.** Chair Patrick called the meeting to order in the Council Chambers of Newport City Hall at 7:02 p.m. On roll call, East, Franklin, Patrick, Croteau, Berman, and Hardy were present. Branigan was absent but excused.

B. Approval of Minutes.

1. Approval of the Planning Commission regular meeting minutes of November 10, 2014.

MOTION was made by Commissioner Croteau, seconded by Commissioner Berman, to approve the Planning Commission minutes as presented. The motion carried unanimously in a voice vote.

C. **Citizen/Public Comment.** No public comment.

D. **Consent Calendar.** Nothing on the Consent Calendar.

E. Action Items.

1. **Recommendation to the City Council regarding the Student Housing Study.** This was what the Commission had just discussed in work session. Tokos noted that the Commissioners are welcome to, but are not obligated to, forward a recommendation on this to the City Council or share any thoughts with them for their meeting on December 1st. Patrick thought the Commission should recommend what was discussed in work session. Croteau thought that Tokos had captured the wording changes. Tokos said one way to approach this would be to ask that he share that information with ECONorthwest as they're collecting final comments to tighten up the language and make it a little more affirmative in the two areas the Commissioners suggested in the work session and then share with the City Council what the Commission's thoughts are; if you think this is a good way to go or not. Patrick said he thinks it's a good way to go. He thought it's nice that it's set up as dual workforce housing and student housing because we need both. One will directly compete with the other. We need to have something that works for both sets; not just one.

MOTION was made by Commission Croteau, seconded by Commissioner Franklin, to recommend the document with the changes suggested and that ECONorthwest look at it again but as a whole it's ready to move forward. The motion carried unanimously in a voice vote.

F. Public Hearings.

1. **Continued Hearing on File No. 3-Z-14.** Consideration of legislative text amendments to Title X (Signs) of the Newport Municipal Code (NMC) to create standards for the placement of electronic message signs on public properties. Existing provisions for signs have been clarified and consolidated, and a new subsection created that is specific to public-zoned lands. The Commission opened the hearing on this matter on November 10, 2014, took testimony, and continued the hearing to tonight. The Commission will forward a recommendation to the City Council on this matter.

Patrick continued the hearing for File No. 3-Z-14 at 7:04 p.m. by reading the summary from the agenda. He called for the staff report. Tokos noted that in the packet was a full ordinance he had put together. He made the changes in the areas that were recommended coming out of the last meeting. He outlined those changes in his cover memo. He noted that again, he had the full record here. He said that he added new language dealing with night-time limit or cap. He went with 11:00 p.m. to 6:00 a.m., but the Commission can set whatever hours they feel are appropriate. That is what Newberg used, and it seemed reasonable because most businesses are closed by 11:00 p.m. However, there is an accommodation in there for those facilities or businesses that are open longer than that. They can keep the light on

¹ Planning Commission meeting minutes 11/24/14.

while they are open to the public. Berman said as an older American, he would like it set for 10:00 p.m. There is the exception if they are still open, that is fine. He said if he lived across from the sign up at the PAC, 10:00 p.m. is a reasonable time to turn it off and quit having that light come in his bedroom window. Franklin said as a younger American, he would agree with Berman. He thought 11:00 p.m. is a little bit too late. Croteau thought that was fine because there is the provision for keeping it on for places that are open for business. Patrick agreed that if they're open and doing something, then that's fine. At the Commission's suggestion, Tokos will change that to having to be off from 10:00 p.m. to 6:00 a.m.

Berman raised a question about wording in Section 10.10.015 of the 28-page markup draft. He said that on the third line he didn't understand what was trying to be said and why it's even there. Tokos said that was from the existing code. He agreed that the word "comply" is in there twice; it should just say "comply with Chapter 10.15," which is a different sign code for Agate Beach and isn't attached here. Patrick asked if we need to make a pass at the Agate Beach Sign Code. Tokos said we talked about that briefly before but left it alone; there's not a demand for it at this point. It can always be revisited. Patrick thought at some point we should get the sign codes all under one. Tokos said they have a much more restrictive code up there. Patrick wondered why they did that. Tokos said they did a neighborhood plan, which talks about having a desire for it to be more restrictive probably because it's largely residential. Berman wondered if someone who wanted to put up a sign that was permissible in the City but not in Agate Beach would argue discrimination against a portion of the city without any basis. Tokos said there is the Agate Beach Community Plan that says as a matter of policy those who live up in Agate Beach area don't want to have as robust signage. Legally we can certainly say a certain part of the City has different rules. That fits within the time, place, and manner. Croteau asked if there's a provision for a variance in the neighborhood plan up there. Tokos said there are variance provisions that actually apply to both. He doesn't know that getting an electronic message sign is eligible for a variance under those rules; but addressing some other aspects would be. Patrick talked about the Shear Sensations sign that was painted on the side of the building, which violated the size for a sign in Agate Beach; but because it was painted on the building that meant it was a mural and not a sign.

Berman's next question was under 10.10.030 (Definitions) Item (G). He noted that he couldn't find Exhibit A that it referenced. Tokos said he will have to go back to see if there are prior versions of the sign code that have it. Patrick thought that was an old one that was for signs that stick out over the sidewalks and such. Franklin said it also mentions Draft Ordinance No. 2075 with attached Exhibit "A." He asked if that's the same one. Tokos said that is the exhibit to the ordinance. He said this an Exhibit A that is in the actual Municipal Code. It is a little different. There should be a graphic that goes with that. Tokos made a note to find the exhibit or, if not available, strike the reference and tweak the language so it makes sense without it. Patrick barely remembers there being one; there was a picture showing projection and clearance from the ground. Croteau said when you read this, you hardly need an exhibit; the wording is pretty clear.

Then, Berman went to Item B on page 9 of 28. He noted that there is still the reference to a 60 watt incandescent bulb there. Tokos said that he missed that. Patrick said that brings up a point, too. He thinks we should have an illuminance meter with so much light at so many feet from the sign. That's fine; but we also need a point source limit, too. That means at a certain distance you can have one bright light shining the same amount of light as the entire sign puts out. Berman said that is what this Item B was getting at, but it did it with a 60 watt incandescent. If we're going to eliminate that, we need some alternative. Patrick said then you just go look up what a normal 60 watt bulb would be. Tokos said you just want what the equivalent is in lumens so that it's more current. He said he would get that. Patrick said that pretty much puts a limit on your point source; sources can't put out more light than a 60 watt bulb. Tokos said we'll probably have to buy an illuminance meter.

Berman said then on page 15, you get to the point where you're talking about R-1, R-2, and R-3. The introductory sentence there says "in all residential districts, the following signs are allowed," and there are A, B, and C; it lists three categories of signs. Then under R-4, it's the same thing. Then you get to commercial and industrial, you say the following signs are allowed but it goes into categories; you don't talk about signs. Tokos said he should add, "the following signs are allowed subject to the following parameters: ..." Berman said the same problem occurs in the Public. Patrick thought we outlawed roof signs. He asked if they are back in now. Tokos said he wasn't aware of outlawing them; they may be prohibited in Agate Beach. Patrick said it was Bay Front. Tokos said we just recently permitted one down there at the Coffee House. Berman asked if this whole thing only applies to signs that are visible. He knows there was one place where it said if a sign was facing into a driveway or something. He asked, what if somebody had a flat roof and painted a 100-foot-long sign that you could only see from an airplane; would that fall under here? Tokos said there is a provision in here, he thinks under exemptions, about if you can't see it. He read, "Signs not visible from public right-of-way or from property other than where the sign is located." So, he guessed if you put it facing directly up, and nobody would see it other than a plane; you are probably fine. Patrick said it's an

exception written for the “no left turn,” “stop signs” facing in. You can put that on private property facing in as you’re coming out. That type of directional sign you can put inside your property without affecting your sign allotment.

Tokos said another change was that he did a cap on brightness. He asked if that seemed okay. He used 0.3 foot-candles. Croteau said it looks like someone, the ISA, has taken this pretty seriously; and it’s pretty well-documented. Tokos said that is what he pulled this out of; their Night-time Brightness Guide. Not all jurisdictions are tackling that, but to the extent that they do, it seems to be where they are going. In the packets he had included the code from Medford, which is much more extensive and more of an involved process than what we are in. Their Council hasn’t acted on this yet; but if you look at their materials, this has been a long saga with them. It’s pretty involved. Tokos was trying to avoid putting the detail into our code that they did; he just didn’t know if it was necessary. He expects this is going to get addressed on the brightness if there’s a complaint that somebody has theirs set too high; this is a method for us to go out and see if that is the case or not. Berman asked if this is a complaint-driven thing. Tokos said we would share this information with them in setting it up. A lot of this stuff is adjustable in electronic message signs. Whatever it is on day one, the next owner can come in and crank it up. He said at Walgreens for example, their management didn’t realize they were rotating their messages too fast; and they had to reset it. He fully expects that it’s going to happen. He said it was no one’s fault; they just didn’t know, and they adjusted it when they were told. He expects that brightness will happen that way too. Croteau said the Medford ordinance is really detailed. Tokos said they’re a larger jurisdiction with much more in the way of resources and a lot more of these issues to struggle with.

Berman thought this reads very well. It’s relatively easy for the department to administer he thought. Patrick recommended that if we do get that meter it would be nice to be able to go out and spot check some of the brighter signs in town and see where they’re falling at. Tokos emphasized that this particular standard applies only to electronic message signs. Most of our back-lit signs would be under the general prohibition; whatever that 60 watt light bulb equivalent would be.

For the record, Tokos noted that he made changes to the variance section because it was not synced up with when we had made the changes to variances. The sign variance language was not in sync with the Zoning Ordinance language dealing with variances. We changed that a few years back and created the opportunity to do an adjustment relatively easily; up to 40% of dimensional standards. Beyond that, true variance standards apply, for which there has to be a legitimate hardship and which is very hard to meet. That whole concept between adjustments and variances wasn’t in the sign code language; and so trying to cross-reference over to basically an older code, it didn’t make any sense. That is why he made those changes. Patrick asked if it has the same 40% for signs, too. Tokos said they have slightly different standards that apply for sign variances. If you’re trying to get multiple additional signs for example, you’re going to be in a variance and a hardship situation. If you’re fixing a nonconforming situation, it says something to the effect that it’s a staff-level review if you’re making a nonconforming sign situation a little bit better. He said, looking at the markup copy, it’s the variance requirements section that starts on page 27 and continues on page 28. It talks about “all sign variance applications based on a change in a sign or signs that decreases but does not eliminate an existing nonconformity” can be a staff-level review. “All sign variance applications that propose to increase the number of signs or propose a variance from any other numerical standard” shall go through a Planning Commission variance review, which is the hardship.

Berman noted that there are several references to Chapter 10.15. Tokos explained that that is the Agate Beach sign code. He said the same variance standards apply to either. That’s what it is driving at.

Tokos said if the Commission is so inclined, now they can recommend that this package be presented to the City Council for adoption with the changes as noted.

MOTION was made by Commissioner Berman, seconded by Commissioner Croteau, to send this ordinance forward to the City Council for their consideration with the changes noted at this meeting. The motion carried unanimously in a voice vote.

Berman asked if the City Council didn’t have to have another hearing on this; and Tokos confirmed that the Council will have another public hearing. He noted that he did provide copies of these materials to Mark McConnell and Catherine Rickbone. Neither felt they needed to show up tonight; but they did receive copies, so they were aware of the changes.

G. New Business. No new business.

H. Unfinished Business. No unfinished business.

I. Director's Comments.

1. Tokos noted that the City Council only has one meeting in December; it is the 1st. They have cancelled their second meeting in December. He noted that the Commission has talked before that we won't be holding a second meeting in December either. He is expecting right now having a work session at the first December meeting to talk about the phase-out of the parking districts. They will be hitting their 5-year time limit; so we will be looking at what some of the options are for making adjustments to the parking code.

2. Berman asked again what the date was for the joint meeting between the Planning Commission and the City Council. Tokos said that will be January 12th.

J. Adjournment. Having no further business to discuss, the meeting adjourned at 7:30 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

Wanda Haney

From: Wanda Haney
Sent: Tuesday, November 25, 2014 11:01 AM
To: 'Sara Wedel'
Subject: City of Newport Legal Notice - File No. 3-Z-14
Attachments: File No. 3-Z-14 Notice - CC - Publish.doc

Sara, Attached is a notice of a City Council hearing for our File No. 3-Z-14 for publication once on **Saturday, December 27, 2014**, which I believe is probably your publication day after Christmas. Please let me know that you received this notice & if it will publish on that day.

Thanks,

Wanda Haney

Executive Assistant

City of Newport

Community Development Department

541-574-0629

FAX 541-574-0644

w.haney@newportoregon.gov

**CITY OF NEWPORT
NOTICE OF A PUBLIC HEARING**

The Newport City Council will hold a public hearing on Monday, January 5, 2015, at 6:00 p.m. or shortly thereafter in the City Hall Council Chambers to consider text amendments to Title X (Signs) of the Newport Municipal Code that create standards for the placement of electronic message signs on public properties. Existing provisions for signs have been clarified and consolidated, and a new subsection created that is specific to public-zoned lands. Pursuant to Newport Municipal Code (NMC) Section 14.36.010, the Council must find that the change is required by public necessity and the general welfare of the community in order to adopt the amendments. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the City Council. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 5:00 p.m. the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The proposed code amendments, additional material for the amendments, and any other material in the file may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director (541) 574-0626 (address above).

(FOR PUBLICATION ONCE ON SATURDAY, DECEMBER 27, 2014)



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Meeting Date: **Agenda #: VI.B**
January 5, 2015

Agenda Item:

PUBLIC HEARING ON ORDINANCE NO. 2073 - AN ORDINANCE REPEALING AND REPLACING THE CITY OF NEWPORT BUSINESS LICENSE CODE

Background:

The City Council held a public hearing on November 17, 2014, to allow for comments to be made on the proposed modifications to the Business License Code. No public comments were made at this hearing. The Council delayed action until after the first of the year to allow City Attorney Steve Rich to review the draft ordinance, and any public comments made before having the Council approve any changes. The City Council established a Business License Work Group over a year ago to review and modify, where necessary, the city's business license ordinance. Councilor Ralph Busby has chaired this effort. The Business License Work Group provided updates to the City Council on efforts to clarify certain provisions of the business license as part of this process.

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 included in this agenda packet. These changes are also reflective of a review of 18 other business license ordinances from across the state. Community Development Director Derrick Tokos will review these changes with the City Council.

Since the November meeting, there has been dialog with Dennis Bartoldus regarding the impacts of the business licensing on the Embarcadero. As a result, a modification was made to the language that clarifies the licensing requirement for condominium or townhouse development. In these cases, those units managed by a single entity pursuant to a covenant or other binding legal instrument will be treated as a single business unit. Any units not under this level of control by the managing unit would require separate business licenses. This allows the City to treat these units as we would treat hotel and motels for purposes of annual health and safety inspections; since these agreements would provide the management firm the right to have access and manage the units similar to a hotel/motel facility. For those units that do not fall under this type of a management relationship, a separate business license would be required to the rental of that unit.

City Attorney Steve Rich has reviewed the business license code revisions and has no objections to the City Council proceeding with approval of this revisions.

Recommended Action:

I recommend that the Mayor conduct a public hearing on Ordinance No. 2073, an ordinance repealing and replacing the City of Newport Business License Code.

Following public hearing I further recommend the City Council approve the following motion:

I move that the City Council adopt Ordinance No. 2073, an ordinance repealing and replacing the City of Newport Business License Code, be read by title only and be placed for final passage.

The Mayor will then ask for a voice vote on whether to read the ordinance by title only and place for final passage.

If approved, the City Recorder will read the title of the ordinance.

A roll call vote on the final passage of the ordinance will then be requested by the Mayor and taken by the City Recorder.

Fiscal Effects:

The revisions will have minimal impacts on city finances.

Alternatives:

Do not approve the ordinance, refer the ordinance back to business license group or administrative staff for further revisions or as suggested by City Council.

Respectfully Submitted,

Spencer R. Nebel
City Manager



Agenda Item # VI.B
Meeting Date January 5, 2015

CITY COUNCIL
AGENCY AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title Ordinance Repealing and Replacing the City of Newport Business License Code

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 to adopt Ordinance No. 2073, an ordinance repealing and replacing Chapter 4.05 of the Newport Municipal Code relating to business licenses. The ordinance incorporates changes recommended by the City’s Business License Work Group.

STAFF RECOMMENDATION: Staff recommends the City Council adopt the ordinance.

PROPOSED MOTION: I move for reading, by title only, of Ordinance No. 2073, an ordinance repealing and replacing Chapter 4.05 of the Newport Municipal Code, and for adoption by roll call vote.

KEY FACTS AND INFORMATION SUMMARY: The City Council formed a Business License Work Group to evaluate the City’s business license code to address concerns that had been raised by members of the public since the code was last revised. The proposed changes clarify a number of the codes provisions and are intended to make the code more user friendly. 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>.

The proposed ordinance clarifies defined terms, activities that require a license, activities exempt from a license, and the process the City follows when reviewing and approving a business license. A section will also be added to the code identifying the types of activities that constitute “evidence of doing business.” The proposed changes are a byproduct of the Business License Work Group’s review of business license ordinances that have been enacted around the state (18 in all).

A public hearing on the proposed changes was held on November 17, 2014. The City Council continued that hearing to January 5, 2015 to provide an opportunity for additional public comment and to afford Steve Rich, Newport’s new City Attorney, an opportunity to review the ordinance. On November 19, 2014 the City received an email from Lee Hardy providing comment on the proposed changes. Staff is also proposing a change to one of the new exemptions listed under NMC 4.05.025(G), the reasoning for which is outlined in an email to Dennis Bartoldus, dated December 19, 2014. Both of these emails are included in the City Council packet.

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:

- Ordinance No. 2073 with attached Exhibit A

- Mark-up copy of draft code with explanation for changes, dated November 10, 2014
- Email correspondence with Lee Hardy, dated November 19, 2014
- Email to Dennis Bartoldus, dated December 19, 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. This resolution can be brought forward for Council consideration within the next 30-days should the Council elect to adopt the ordinance. That will ensure the fees are in place before the ordinance is effective.

CITY OF NEWPORT

ORDINANCE NO. 2073

AN ORDINANCE REPEALING AND RE-ENACTING
CHAPTER 4.05 OF THE NEWPORT MUNICIPAL CODE
PERTAINING TO BUSINESS LICENSING

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 businesses are licensed to conduct business in the City of Newport; and

WHEREAS, the purpose of this ordinance 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.

WHEREAS, the City Council adopted Ordinance No. 2030 pertaining to the licensing of businesses, on March 19, 2012, and it became effective on July 1, 2012, and the ordinance needs to be updated to address efficiencies and best practices.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Chapter 4.05 of the Newport Municipal Code, and all previous ordinances related to the licensing of businesses 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 _____, 2015.

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

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 state law.

4.05.015 DEFINITIONS

Business - Any for-profit or not-for-profit enterprise, establishment, store, shop, activity, profession, or undertaking 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. As used in this Chapter, 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.

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.

Endorsement - Standards established by the city which a business license applicant must satisfy 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.

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 under Section 4.05.025. To continue to lawfully conduct business in the city, every licensed business must submit an application for a

business license renewal by July 1st of every year. After that date, the business license expires.

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 within a condominium or townhouse development, 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.

4.05.030 FEES

- A. This ordinance hereby establishes a business license application fee and a business license annual fee.
- B. The business license application fee amount shall be charged when a new or expired business license application is accepted by the city. The business license application fee is non-refundable. The amount of the business license fee shall be set from time to time by resolution of the City Council and shall be sufficient to recover the Finance Department's administrative cost of processing the applications. Persons holding expired business licenses will be charged a new business license application fee to re-apply.
- C. The business license annual fee shall be charged when a business license application is accepted by the city or when a business license renewal application is accepted by the city for the renewal of an existing, non-expired business license. The amount of the business license annual fee shall be determined by resolution of the City Council.
- D. Not-for-Profit Entities shall not be charged a business license annual fee. Such entities must still obtain a business license, pay the business license application fee, and annually renew the license at no cost.

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

**4.05.035 MULTIPLE LOCATIONS OR
BUSINESSES**

- A. A person who does business from more than one physical location, 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.
- 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.

4.05.040 APPLICATION

- A. All persons desiring to do 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. An application for a new business license or annual renewal of an existing business license 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 30th 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 or renewal, the city shall inform the applicant of any business license application fees and business license annual fees due. Such fees shall be due and payable on the date the application is submitted.
- E. The city will endeavor to process all applications within 30 days of the date they are received or to notify the applicant in writing 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.

4.05.045 ISSUANCE; DISPLAY; TRANSFER

- A. Upon acceptance of a business license application, together with full payment of the applicable application fee and annual fee, the city shall issue a written receipt for same. The receipt shall serve as a temporary business license for an application that does not require an endorsement and shall be effective until the date of the city's approval or denial of the business license or renewal of same. The temporary business license shall be public notice that the person named therein 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 reviewed by the Community

Development, Public Works, Fire, and Police Departments, and approved by the City Manager.

- C. Upon receipt of a business license, a person who is required by this ordinance to have a business license shall cause the 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.
- D. Issuance of a business license, temporary or otherwise, shall not preclude enforcement against the licensee of any city ordinance or state statute.
- E. 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.

4.05.050 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 termination of the license and/or 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.

4.05.055 ADMINISTRATION

- A. The City Manager is responsible for the administration of this Chapter and 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.

4.05.060 DENIAL OR REVOCATION

- A. The City Manager may deny a business license or a license renewal application, or revoke a business license issued under the provisions of this chapter 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, or state law or regulation;
 3. Conducting the licensed activity in an unlawful manner, inconsistent with the requirements of this Chapter, 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 under subsection A., above, 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 or annual renewal is denied.

4.05.065 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 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.

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 by the alleged violator 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 alleged violator was conducting a business activity within the city on the day or date during which such representations were made.

4.05.075 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 license 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 issued or the day the of revocation is mailed; (ii) the day the disputed fees are assessed; or (iii) the day that the rules or regulations were misapplied according to the applicant's or licensee's allegation.

- B. The City Council shall set a time and place for a hearing on the appeal within thirty (30) 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.

Mark-up Copy of Revisions to Chapter 4.05 of the Newport Municipal Code

Formatting Note: November 10, 2014 markup. 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 Chapter, 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. Legal counsel recommends keeping the last sentence as the term “doing business” is used throughout the code.

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.

Staff: Legal counsel recommends that the discretionary language (stricken) be removed. As a practical matter, the city shouldn’t be issuing a business license for a use that requires an endorsement until the endorsement standards have been satisfied.

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 under Section 4.05.025. To continue to lawfully conduct business in the City, every licensed business must submit an application for a business license renewal by July 1st of every year. After that date, the business license expires. 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. Language addressing timing of renewal applications has been moved to this section (from 4.05.040) at the recommendation of legal counsel. The attorney also notes that the last sentence means that an employee or

volunteer will have committed a code violation if (s)he is working for an owner that lets its license lapse. This seems like an unnecessary extension of the code, since the code is structured to address those circumstances where a business license is required; therefore, staff recommends it be stricken.

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 Bbusiness license Application Ffee and a Bbusiness Llicense Aannual Ffee.

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

C. ~~The business license annual fee shall be charged when a new business license application is accepted by the City processed or when a business license renewal application is accepted by the City for the a person renewal of 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 obtain a business license, on the forms provided by the city and must still pay the business license 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 desiring to 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~~ An application for a new business license or annual renewal of an existing business license 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 30th 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 or renewal, the city shall inform the applicant of any business license 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. ~~To continue to lawfully conduct business in the City, every licensed business must submit an application for a business license renewal or by July 1st of every year. After that date, the business license expires. 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.
- E. The city will endeavor to process all applications within 30

days of the date they are received or to notify the applicant in writing 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.

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. Legal counsel recommends that Subsections D and E be presented as drafted for clarity. The prior version merged the two subsections.

4.05.035045 ISSUANCE; DISPLAY; TRANSFER

A. A.—The city shall issue a written receipt when it accepts a business license application is approved applied for and any applicable business license application fees and business license annual 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 until the date of the City’s approval or denial of the business license/license renewal. 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 temporary license will be effective until the City issues or denies the business license application. Legal counsel has expressed that it is very important that any temporary authorization clearly state the limited nature of the authorization. Issuance of a temporary authorization 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. The City Manager may deny a business license or a license renewal application, or revoke a business 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 under subsection A., above, 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 or annual renewal is denied.

Staff: language has been added to require that the business license application fee be refunded if the associated application is denied. Legal counsel amended language in Subsection A to clarify the difference between denial of an

application and revocation of an issued license.

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.

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 by the alleged violator 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~~ alleged violator 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).

4.05.060075 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 license 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 issuedd 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 according to the applicant's or licensee's allegation.

- B. The City Council shall set a time and place for a hearing on the appeal within ~~twenty~~ thirty (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.

Derrick Tokos

From: Derrick Tokos
Sent: Wednesday, November 19, 2014 2:50 PM
To: 'Lee Hardy'
Subject: RE: business license ordinance

Lee,

Your reading of 4.05.025 is consistent with what we are trying to accomplish. It is also consistent with the City's current practice. I have a copy of the declarations for The Landing. They have 42 restricted units that, though individually owned, are restricted to short term (i.e. less than 30 day) rental and required to be rented through The Landing's rental pool. Our Finance Department has issued a single business license as it is effectively a motel/hotel use. There are 15 unrestricted units that can be occupied as residences or rented at the discretion of the owner. I believe that a couple of those owners have elected to use their condo units as vacation rentals and they have obtained business licenses with vacation rental endorsements.

It is my understanding that units at the Embarcadero are not required to be rented through the in-house rental pool. Therefore, owners who elect to use their units for vacation rental purposes are required to obtain a business license with a vacation rental endorsement. Their situation is effectively the same as the 15 unrestricted units at The Landing. The City has issued a number of business licenses with VRD endorsements to owners at the Embarcadero since the City's revamped vacation rental rules went into effect.

I'll look into the other two issues that you raised. Changes to the "Fee" section are intended to, among other things, clarify the interplay between the "application fee" and "annual fee." It looks like we may need to make some additional tweaks. The application fee is intended to apply to new business license applications or applications that are being filed because their license has expired. It is not intended to apply to renewals. Only the annual fee is supposed to apply to renewals. I believe that our Finance Department is planning to provide a form for renewals. It may be as simple as having owners sign a sheet confirming that the data we have on file is current (i.e. no changes to phone numbers, ownership, etc.).

Thanks for passing along your comments.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626
fax: 541.574.0644
d.tokos@newportoregon.gov

From: Lee Hardy [mailto:lee@yaquinabayproperties.com]
Sent: Wednesday, November 19, 2014 9:33 AM
To: Loren Joling
Subject: business license ordinance

Hi Loren,

I read through the proposed business license changes last night as you requested. I think that they will have lack of clarity on a couple of points:

1. Lumping "contractors" with "employees" in their definitions: Statutory employees should not be lumped with subcontractors contractors in terms of liability for business licensing. They are entirely different animals.
2. They want to charge an application fee for a new business license application, but section 4.05B (Fees) states that "The business license application fee amount shall be charged when a license application is accepted by the City." The seems to be a conflict in wording and strict interpretation can result in the application fee being charged with any renewal application. And will the City provide a form to be used for the renewal application or just send a bill as it has done for years.
3. 4.05.025 Exemptions: They are exempting persons who are required by covenant or other binding legal instrument to have their unit managed by a single entity. Apparently this applies to The Landing, although I would want to check The Landing's declaration and by-laws to verify that. It would seem not to apply to the Embarcadero where any unit owner can elect to NOT be in the Embarcadero rental pool unless administrative staff want to interpret the ordinance that way. It remains to be seen as to how the City will APPLY this ordinance. Also, if the Embarcadero, as it has in the past, manages a unit there as a long term (more than 30 days) rental, it may be operating in conflict with state law that would require the Embarcadero to have a real estate license since it is not in any sense of the word a "resident manager/employee" of the unit owner.

Anyway, those are my comments on the proposed amended ordinance.

Lee Hardy

Derrick Tokos

From: Derrick Tokos
Sent: Friday, December 19, 2014 11:45 AM
To: 'Dennis Bartoldus'
Cc: Steven Rich; Peggy Hawker; Lee Hardy; Robert Murphy
Subject: RE: Business License Code Revisions

Hi Dennis,

I talked to our City Manager and City Attorney, and we will be proposing that language be added to clarify the scope of the exemption we are proposing under NMC 4.05.025(G). Our intent is to limit the exemption to condominium and townhouse developments. We do not believe that it is appropriate to exempt single family homes that are being operated as vacation rentals that happen to be managed by someone other than the owner.

Here is the language:

“A person’s rental of a dwelling unit **within a condominium or townhouse development**, 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.”

This shouldn’t impact the Embarcadero, as it will qualify under the exemption as a condominium development. Condominium and townhouse developments that qualify under this exemption will be treated as hotels/motels for purposes of the Newport Fire Department’s annual health/safety inspections. Health and safety concerns for single family dwellings that are operated as vacation rentals will continue to be picked up as part of the vacation rental endorsement to a business license.

I am copying Lee Hardy as she provided comment regarding this specific provision, so I want to make sure that she is aware of the change as well.

Derrick I. Tokos, AICP
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d.tokos@newportoregon.gov

From: Dennis Bartoldus [mailto:diblawn@charter.net]
Sent: Wednesday, December 17, 2014 4:40 PM
To: Derrick Tokos
Cc: Steven Rich; Peggy Hawker
Subject: Re: Business License Code Revisions

Derrick,

Thank you for sending. I had the opportunity to meet Steve on my way out of City Hall today.

Dennis

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Clifford G. Collard, of Counsel
380 SW 2nd St.
PO Box 1510
Newport, OR 97365
Phone: 541-265-5400 Fax: 541-265-7633
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----- Original Message -----

From: Derrick Tokos
To: [Dennis Bartoldus \(diblawn@charter.net\)](mailto:diblawn@charter.net)
Cc: [Steven Rich](#) ; [Peggy Hawker](#)
Sent: Wednesday, December 17, 2014 3:47 PM
Subject: Business License Code Revisions

Dennis,

Per our conversation, attached is a copy of the draft ordinance that the City Council will consider on January 5, 2015. Also, enclosed is a mark-up version showing where amendments have been proposed.

I'll be out of the office the last 2-weeks of this month, returning on January 5th. In the meantime, if you have questions or comments please direct them to our City Attorney, Steve Rich, who I have copied on this email.

Thank you,

Derrick I. Tokos, AICP
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CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #.VI.C.
Meeting Date: January 5, 2015

Agenda Item:

PUBLIC HEARING AND POSSIBLE ADOPTION OF ORDINANCE NO. 2058 - AN ORDINANCE REPEALING AND RE-ENACTING CHAPTER 4.15 OF THE NEWPORT MUNICIPAL CODE RELATED TO THE LICENSING OF TAXICABS AND TAXICAB DRIVERS

Background:

In the fall of 2013, the City Council initiated discussions on modifying the application process for taxicab licensing. Then, City Attorney, Rob Connell, had recommended this process not occur at that time since there was a pending application under the old ordinance. As a result, the revisions were put on hold for a period of time. After repeated contacts, the applicant did not respond to the City's request as to the status of their original application. The taxicab ordinance was reviewed by the Business License Work Group. Modifications were made prior to submitting it to the Council. A public hearing was held in November by the City Council on the proposed revisions to the Taxicab licensing provisions. Following that public hearing, the Council opted to hold on any action on this ordinance until City Attorney Steve Rich could review the ordinance. The City Attorney has since reviewed the ordinance, made several minor changes to the ordinance as was previously reviewed by Speer Hoyt.

The most significant change to this ordinance is shifting the administration of the issuance of taxicab endorsements from a Council action to an administrative action. Under the existing code after an application is filed, the City Manager was required to complete an investigation of the applicant and submit to the Council a recommendation for allowance or denial of the application for the taxicab endorsement. Currently, the City Council is required to conduct a public hearing as to whether to grant the endorsement, and the applicant was responsible for all costs or publishing notice of the hearing. Furthermore, the Council is required to determine the financial responsibility of the applicant, determine that the color scheme of the taxis do not conflict with any currently operating taxis, and other specific issues. The proposed ordinance deregulates this aspect of the licensing process, and treats a taxicab business license as an administrative function provided the applicant meets the minimum criteria of the ordinance.

Also, please note there were several changes to address temporary taxicabs, as well. Temporary taxicabs go through the same screening process as regular cab license requests. They are required to provide the same dollar amount of insurance on their vehicles. They are exempted from the equipment requirements for permanent taxicab companies. Also, temporary taxicab driver permit holders are exempted by the

requirements that require an inspection by an automobile mechanic to certify the vehicle is in safe, operating condition.

City Attorney, Steve Rich, has reviewed the draft ordinance. One of the issues raised by Speer Hoyt was whether the City wanted to specifically license taxicabs due to the possible exposure to liability should the City not follow through with its requirements under this ordinance. City Attorney, Steve Rich, has reviewed this with CIS. It is his conclusion, that while some risk is created by the City anytime it regulates an activity, based on previous litigation in this area, it is his opinion that while there is some risk to the City, the risk is minimal.

Recommended Action:

I recommend the Mayor conduct a public hearing on the approval of Ordinance No. 2058, an ordinance repealing and reenacting Chapter 4.15 of the Newport Municipal Code related to the Licensing of Taxicabs and Taxicab Drivers.

Following the Public Hearing, I further recommend that Council consider the following motion:

I move approval of Ordinance No. 2058, an ordinance repealing and reenacting Chapter 4.15 of the Newport Municipal Code related to the Licensing of Taxicabs and Taxicab Drivers be read by title only and placed for final passage.

The Mayor will then ask for a voice vote on whether to read the ordinance by title only and place for final passage.

If approved, the City Recorder will read the title of the ordinance.

A roll call vote on the final passage of the ordinance will then be requested by the Mayor, and taken by the City Recorder.

Fiscal Effects:

The revised ordinance will have minimal impact on finances for the City.

Alternatives:

Do not approve the ordinance revision. Refer the matter back to City Administration for specific revisions to the ordinance, or as suggested by the City Council.

Respectfully submitted,



Spencer R. Nebel
City Manager



Agenda Item # VI.C__
Meeting Date 1/5/15__

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title Consideration of Ordinance No. 2058 Regarding Taxicab
Licensing_____

Prepared By: Hawker Dept Head Approval: ph City Mgr Approval: _____

Issue Before the Council: The issue before Council is the consideration of adoption of Ordinance No. 2058 regarding taxicab licensing. This ordinance, if adopted, would repeal and re-enact Chapter 4.15 of the Newport Municipal Code.

Staff Recommendation: This is entirely a Council decision.

Proposed Motion: I move to read Ordinance No. 2058, an ordinance repealing and re-enacting Chapter 4.15 of the Newport Municipal Code, pertaining to the licensing of taxicabs, by title only, and place for final passage.

Key Facts and Information Summary: The draft Ordinance No. 2058 is included in the packet, and the most significant change is that this new language restructures the process to allow taxicab endorsements to be issued administratively without a hearing before the City Council. The licensing process will be more consistent with other business licenses and endorsements issued by the city. It would also reduce the burden that applicants would have to meet in the application process. The Business License Work Group reviewed the draft taxicab ordinance and made revisions to it. The draft before Council incorporates the comments of the Business License Work Group, and minor changes made by the City Attorney, Steve Rich. Previously, the ordinance was sent to Speer Hoyt for legal review, and Emily Jerome made several comments, including:

“It is very important that the city understands that, by regulating taxis, the city opens itself to liability for an individual’s injuries or damages from a taxi accident or incident. We advise cities not to regulate taxis for this reason. With the decision to adopt these regulations, the city is basically representing that it will make sure taxis are safe and insured and that taxi drivers safe, law-abiding citizens. If the city does not follow its regulations to the letter, liability for a taxi-related incident could be hard to avoid, despite the waivers your regulations will require.

One major question relates to the (lack of) regulation of temporary taxis. Under the draft ordinance, temporary taxis are exempted from almost every requirement. This is

especially disconcerting given the liability concern I've discussed above. I suggest you do a review of the taxi ordinance to get a clear understanding of what (little) a temporary taxi driver must do under these draft regs and discuss whether the city should either completely exempt temporary drivers or require more of them." Additionally, Emily had other concerns and made many comments regarding the draft ordinance.

A public hearing on Ordinance No. 2058 on November 17, 2014. There was no public comment.

The draft ordinance before Council this evening was e-mailed to representatives of Yaquina Cab on Thursday, December 18, 2014, at which time, they were advised of Council's consideration of the draft at this meeting.

Other Alternatives Considered: None.

City Council Goals: None.

Attachment List: Ordinance No. 2058 DRAFT

Fiscal Notes: None.

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 _____, 2015.

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 shall 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 shall 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(s) established by City Council resolution. The application shall 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 until and unless the following applicant information regarding the applicant has verified:
1. The applicant is 21 or more years of age;
 2. The applicant possesses a valid Oregon driver's license;
 3. The applicant has not had a driver's license revoked or suspended by any state within the last five years;
 4. The applicant has made no material false statement in the application;

5. The applicant does not owe the city any monies due to unpaid traffic fines, parking fines, or any other fee.
 6. The applicant has been investigated by the Police Chief and the Police Chief has found 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.
 - a. Where the investigation discloses 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, the Police Chief shall not issue a taxicab driver permit or temporary driver permit to the applicant.
- 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 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 shall 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, shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 drivers 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 shall 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 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.



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VII.A.
Meeting Date: January 5, 2014

Agenda Item:
FROM THOMPSON'S SANITARY SERVICE ON THE CURBSIDE COMPOSTING PROGRAM

Background:

Thompson's Sanitary Service will provide an update on the implementation of the Curbside Composting Program for the City of Newport. This program was implemented in July after a significant amount of public dialogue and debate. As a result at the public comments, an option was created for residents who generate minimal solid waste to opt out of the composting component. Thompson's will give an update on their experience in initiating this new program.

Also, at the time of implementation, there was discussion on the City developing some sort of citizen survey on the program. This has not been done as of this date. The Council may want to discuss this and provide further direction to the City Administration on how to best proceed with this survey.

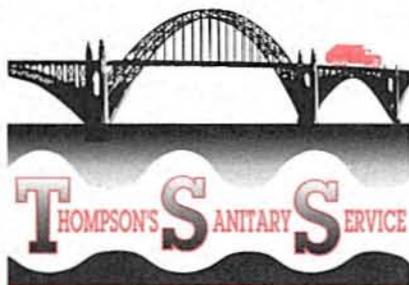
Recommended Action:
No formal action is required.

Fiscal Effects:
None

Alternatives:
None Recommended

Respectfully submitted,

Spencer R. Nebel
City Manager



TEL: (541) 265-7249
FAX: (541) 265-3034
7450 NE Arroyo PO Box 648 Newport, OR 97365
December 30, 2014

Spencer Nebel
City of Newport
169 SW Coast Hwy
Newport, Oregon 97365

Dear Mr. Nebel:

On Monday night we will be happy to review benchmark data and answer questions in regards to the curbside mixed compostable program. We are very happy with the success of the program so far. In, the meantime, please see graph of historical collection data from the program.

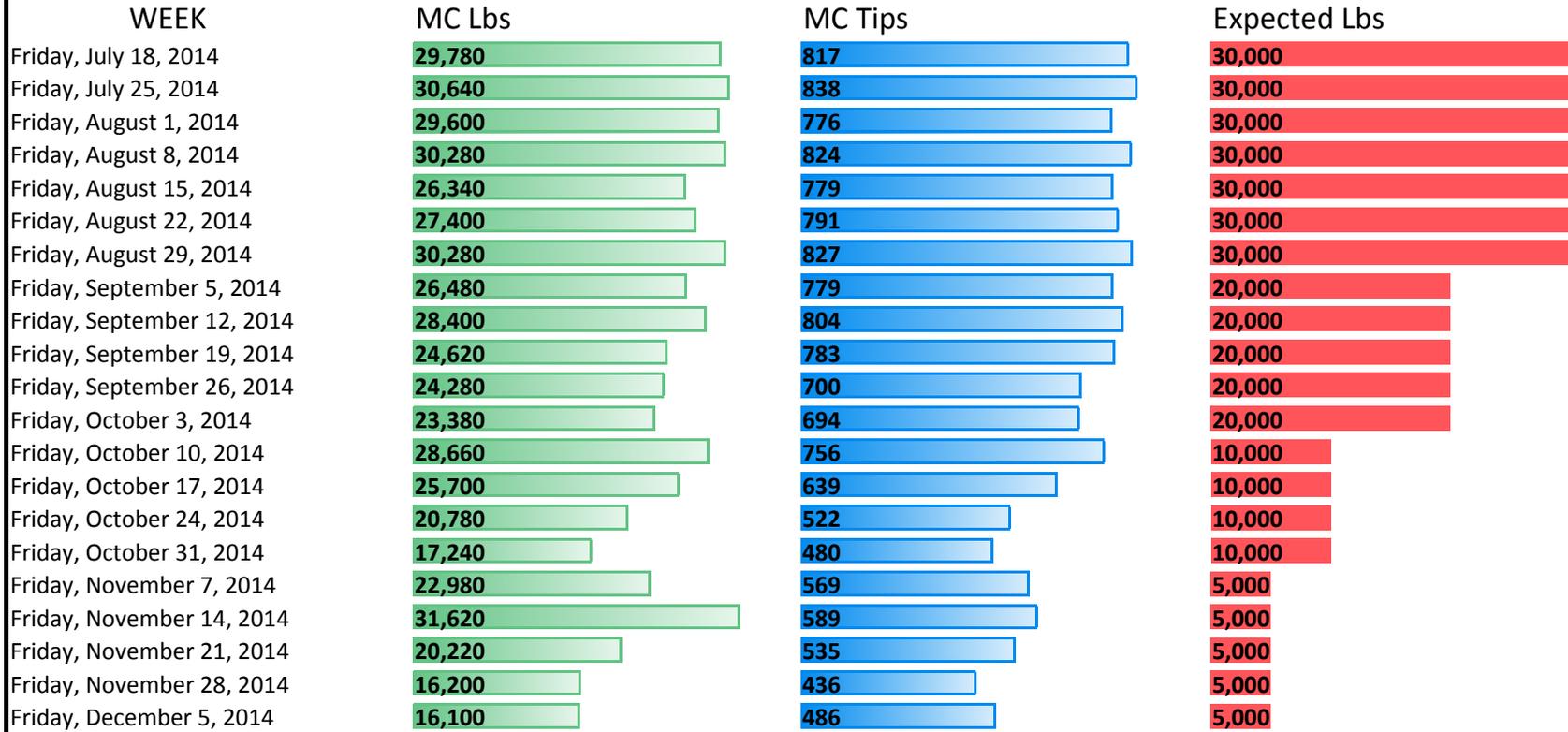
Best Regards,

A handwritten signature in black ink that reads 'Rob M. Thompson'. The signature is written in a cursive, flowing style.

Robert M. Thompson President

TSS

MC Collected in Newport





CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #.VIII.A.
Meeting Date: January 5, 2015

Agenda Item:

APPROVAL OF AMENDMENT NO. 1 TO THE PACIFIC COAST NATIONAL SCENIC BYWAY PROGRAM PROJECT AGREEMENT FOR AGATE BEACH WAYSIDE IMPROVEMENTS.

Background:

In 2011 the City and County funded a series of design charrettes to develop a concept for how the Agate Beach Wayside could be improved to better serve tourists, the local community, and the neighborhood. The information collected was the basis for a Federal Highway Administration Scenic Byways Grant application which was submitted later that same year. The City was informed in 2012 that the project was going to be funded through ODOT. It was not until September of this year that ODOT hired the consulting firm OTAK to design and prepare the bid documents for this project.

There have been two meetings with various stakeholders regarding this project in November and December of this year. At the most recent meeting, property owners and stakeholders were shown several scenarios which could be used as part of the final design for this project. People in attendance at the meeting were asked to use sticky notes to place their preferences, concerns and ideas on the various preliminary plans that have been developed for this project. The most significant issue relates to one way versus two-way traffic on NW Gilbert Way. Property owners are divided on this issue. From a logistical standpoint, two way traffic seems to provide the best scenario to address the various issues in this neighborhood. Those not favoring two-way traffic are trying to restrict traffic flow through their neighborhood. In doing this, vehicles pull into the neighborhood and have no access out of the neighborhood other than trying to execute a turnaround in someone's driveway and pulling back out. If there was two way traffic, then traffic would flow both ways through this area. The other significant issue is access to the beach. There are a number of property owners who would prefer that the current access be eliminated, and that surfers be forced over to the Lucky Gap Trail for access to the beach. Providing safe access is a requirement of this grant and the project proposes to improve the permanent trail that runs to the north of Lucky Gap Trail, since this is the pathway that is used to access the beach by surfers. An alternate trail was suggested that will also be evaluated; however, based on geological issues on that site it appears there would be significant challenges in creating a trail at the alternate location suggested.

While this project will certainly continue to have a variety of conflicting opinions among neighbors, it is critical to improve the wayside, expand parking in the wayside area, construct the restrooms, and create a safe way for surfers to access Agate Beach. In addition, it is apparent

that better directional signage is needed since many tourists get stuck within this neighborhood thinking they will have either beach access or an ocean view. Finally there were alternate methods suggested for those who drive through the area to check out the surf to determine whether they want to surf at Agate Beach on that particular day. Suggestions of placing a live-cam and possible monitor on the wall of the restroom facility could reduce the number of people that try to drive through the neighborhood to get the best view of the conditions at Agate Beach.

Since ODOT did not retain a design professional until September of this year, it is necessary for the Council to consider approving an amendment to the original agreement creating new milestone dates of September 30, 2015, for the obligation of funds with completion by September 15, 2016.

Recommended Action:

I recommend that the City Council consider the following motion:

I move approval of Amendment No. 1 to the Scenic By-Way Program Project Agreement for the Pacific Coast National Scenic By-Way Agate Beach Wayside Project in the City of Newport, and authorize the Mayor to execute the amendment.

Fiscal Effects:

Total funding for this project is \$697,121 with \$557,696 coming in the form of Federal funds. The balance of funding is from local sources including System Development Charge Funds and Room Tax dollars.

Alternatives:

None recommended.

Respectfully submitted,



Spencer R. Nebel
City Manager



Agenda Item # VIII.A
Meeting Date January 5, 2015

CITY COUNCIL
AGENDA ITEM SUMMARY
City of Newport, Oregon

Issue/Agenda Title Amendment No. 1 to Scenic Byway Program Project Agreement for Agate Beach Wayside Improvements
Prepared By: Derrick Tokos Dept Head Approval: DT City Mgr Approval:

ISSUE BEFORE THE COUNCIL: Consideration of Amendment No. 1 to Scenic Byway Program Project Agreement No. 29099 between the State of Oregon, through the Oregon Department of Transportation, and City of Newport. The amendment revises the milestone dates in agreement Exhibit B, providing a new deadline for obligation of construction funds and completion of the planned wayside improvements. The new milestones require construction funds to be obligated no later than September 30, 2015. The project must be completed by September 15, 2016.

STAFF RECOMMENDATION: Staff recommends the Council approve the amendment.

PROPOSED MOTION: I move that the Council authorize the Mayor to sign the agreement, as presented.

KEY FACTS AND INFORMATION SUMMARY: In 2011, the City and County funded a series of design charrettes to develop a concept for how the Agate Beach Wayside could be improved to better serve tourists and the local community. That information was used to prepare a Federal Highway Administration (FHWA) Scenic Byways Grant Application, which was submitted later that same year. In August of 2012, the City was informed that it received grant funding for the project. The Oregon Department of Transportation (ODOT) administers federally funded projects for small communities such as Newport. An Intergovernmental Agreement between the City and State was completed in July of 2013. ODOT began the process of securing a design consultant in February of 2014. In September, the consulting firm OTAK was selected to design the project and prepare the bid documents.

The project components include construction of a restroom and showers at the wayside; a reconfiguration of the parking area to increase the number of available spaces, improve business access, and reduce conflicts at US 101; construction of sidewalk along NW Circle Way (undeveloped) and NW Gilbert Way between the wayside and trail accessing the north end of Agate Beach; boardwalk and stairway improvements to improve safety along the beach access trail; and the extension of NW Gilbert Way through to US 101 to provide a secondary access into the neighborhood. Total funding for the project is \$697,120, with \$557,696 coming from the federal government. The balance of the funding is from local sources, including System Development Charge funds and room tax dollars.

The date for obligating construction funds in the original agreement was November 10th of this year, with construction to be completed by November of 2015. Neither of those dates is attainable at this point. OTAK is on schedule for completing the design so that the project is ready to be bid by early July, well ahead of the new September deadline.

OTHER ALTERNATIVES CONSIDERED: None.

CITY COUNCIL GOALS: It has been a Council goal to see this project completed.

ATTACHMENT LIST:

- Amendment No. 1 to Scenic Byway Program Project Agreement for Agate Beach Wayside (No. 29099)

- Scenic Byway Program Project Agreement for Agate Beach Wayside (No. 29099)

FISCAL NOTES: City match funds are budgeted.

AMENDMENT NUMBER 01
SCENIC BYWAY PROGRAM PROJECT AGREEMENT
Pacific Coast National Scenic Byway
Agate Beach Wayside
City of Newport

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and **CITY OF NEWPORT**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on July 30, 2013. Said Agreement covers the improvement of access to Agate Beach.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to extend the dates for time, obligation of construction funds, and for project completion. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

Exhibit B, Attachment No. 1 – Special Provisions, and Attachment No. 2 – Federal Standard Provisions shall be deleted in their entirety and replaced with the attached Revised Exhibit B, Revised Attachment No. 1 – Special Provisions, and Revised Attachment No. 2 – Federal Standard Provisions. All references to "Exhibit B," "Attachment No. 1 – Special Provisions," and "Attachment No. 2 – Federal Standard Provisions" shall hereinafter be referred to as "Revised Exhibit B," "Revised Attachment No. 1 – Special Provisions," and "Revised Attachment No. 2 – Federal Standard Provisions."

TERMS OF AGREEMENT, Paragraph 6, Page 2, which reads:

6. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or three (3) calendar years following the date of final execution, whichever is sooner.

Shall be deleted in its entirety and replaced with the following:

6. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment, or September 30, 2016, whichever is sooner.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key No. 17940) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

CITY OF NEWPORT, by and through its
elected officials

By _____
Mayor

Date _____

By _____
City Manager

Date _____

APPROVED AS TO FORM

By _____
City Legal Counsel

Date _____

Agency Contact:

Derrick Tokos
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
Phone: (541) 574-0626
Email: d.tokos@newportoregon.gov

State Contact:

Michael Starnes, Local Agency Liaison
ODOT, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301
Phone: (503) 986-6920
Email: michael.s.starnes@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Active Transportation Section Manager

Date _____

By _____
Scenic Byway Program Manager

Date _____

By _____
Region 2 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Original signed by Kathy Lincoln
Assistant Attorney General

Date 7/16/2013

REVISED EXHIBIT B

Progress Reports and Project Change Request Process

Agreement No. 29099

Key Number: 17940

Project Name: Pacific Coast National Scenic Byway, Agate Beach Wayside

1. **Project Description** – This Project includes, but is not limited to, improving access from the Oregon Coast Highway to Agate Beach, redesigning the wayside and parking areas, and local road improvements.
2. This Project is subject to progress reporting and project change process as stated below.
3. **Monthly Progress Reports (MPR)** – Agency shall submit monthly progress reports using MPR Form 734-2862, incorporated by reference and made a part of this Agreement. The MPR is due by the 5th day of each month, starting the first month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project’s construction contract.

The fillable MPR form and instructions are available at the following web site:

http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

4. **Project Milestones** – The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

Table 1: Project Milestones – Construction Project

| | Milestone Description | Completion Date |
|---|-----------------------------------------------------------------------------------------------------------|------------------------|
| 1 | Obligation (Federal Authorization) of Scenic Byway funds for the Preliminary Engineering phase of Project | 07/15/2013 |
| 2 | Obligation (Federal Authorization) of Scenic Byway funds for the Construction phase of Project | 09/30/2015 |
| 3 | Project Completion based on State Issuing Project Acceptance or “Second Note” | 09/15/2016 |

5. **Project Change Request (PCR) Process** – Agency must obtain approval from State’s contact for changes to the Project’s scope, schedule, or budget as specified in Paragraphs 5a, 5b and 5c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.

- a. Scope – A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph 1 of this Exhibit).
 - b. Schedule – A PCR is required if Agency or State’s contact anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
 - c. Budget – Total Project Cost and approved funds for the Project are controlled by Terms of Agreement, Paragraph 2 of this Agreement.
6. **PCR Form** – Agency must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A PCR may be rejected at the discretion of State’s Scenic Byway Program Manager.

The fillable PCR form and instructions are available at the following web site:
http://www.oregon.gov/ODOT/TD/AT/Pages/Forms_Applications.aspx

7. **Consequence for Non-Performance** – If Agency fails to fulfill its obligations in Paragraphs 3 through 6 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State’s course of action through the duration of Agency’s default may include: (a) restricting Agency consideration for future funds awarded through State’s managed funding programs; (b) withdrawing unused Project funds; and (c) terminating this Agreement as stated in Terms of Agreement, Paragraphs No. 10a and 10b of this Agreement.

REVISED ATTACHMENT NO. 1

SPECIAL PROVISIONS

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments.
2. The Parties agree that the delivery date for the Project’s “Plans, Specifications, and Estimates” (PS&E) package is July 23, 2015. State may withdraw all National Scenic Byway Funds that are not obligated on or before September 30, 2015, and State will have no obligation to fund any remaining phases of work through the National Scenic Byways program.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency’s share of the Project. Prior to award of the contract, the Project cost is defined as the engineer’s estimate plus 10 percent.
4. State may make available Region 2’s On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
5. Agency shall have a current Indirect Cost Allocation Plan and an approved indirect rate from its federal cognizant agency prior to invoicing indirect costs. A copy of the current approved rate from the federal cognizant agency or State must be attached to invoices with indirect costs. If Agency does not have a current approved rate, it can apply directly to its federal cognizant agency for an Indirect Cost Rate. If the Agency has no federal cognizant agency, it can submit an indirect Cost Rate proposal to State for review and approval for State invoices. Without an approved Indirect Cost Rate State will only pay Agency for Direct Costs.
6. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
7. Maintenance responsibilities will survive any termination of this Agreement.

ATTACHMENT NO. 2

FEDERAL STANDARD PROVISIONS

PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will act for Agency in other matters pertaining to the Project. Prior to taking such action, State will confer with Agency concerning actions necessary to meet federal obligations. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of both Parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. Non-certified agencies must contract with State or a State certified local public agency to secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. Non-certified agencies may use a State-approved consultant to perform preliminary engineering, and construction engineering services.

PROJECT FUNDING REQUEST

4. State shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) Program Development (Planning), b) Preliminary Engineering (National Environmental Policy Act - NEPA, Permitting and Project Design), c) Right of Way Acquisition, d) Utilities, and e) Construction (Construction Advertising, Bid and Award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at Agency expense. Agency shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by State. State shall notify Agency in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

5. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount for the federal funds and any portion of the Project, which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). Agency must obtain written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. State will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria in OMB CIRCULAR NO. A-133.

6. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds or allocations of State Highway Trust Funds to Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the *Local Agency Guidelines Manual* that result in items being declared non-participating by FHWA, such items deemed non-participating will be negotiated between Agency and State.
7. Agency agrees that costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. Agency's estimated share and advance deposit.
 - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - b) Agency's construction phase deposit shall be one hundred ten (110) percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is cancelled. Any balance of a cash deposit in excess of amount needed, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to Oregon Revised Statutes (ORS) 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool), and an Irrevocable Limited Power of Attorney is sent to State's Active Transportation Section, Funding and Program Services Unit, or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
9. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
10. Agency shall follow requirements stated in the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving five hundred thousand (\$500,000) or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in

which the local agency participates. The cost of this audit can be partially prorated to the federal program.

11. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
12. Agency shall present invoices for one hundred (100) percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison for review, approval and reimbursement to Agency. Costs will be reimbursed consistent with federal funding provisions and the Project Agreement. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one-month duration, based on actual expenses to date. All invoices received from Agency must be approved by State's Liaison prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final invoices submitted after the three (3) months shall not be eligible for reimbursement. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR part 18 subpart 42).
13. Agency shall, upon State's written request for reimbursement in accordance with Title 23, CFR part 630.112(c) 1 and 2, as directed by FHWA, reimburse State for federal-aid funds distributed to Agency if any of the following events occur:
 - a) Right of way acquisition is not undertaken or actual construction is not started by the close of the twentieth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized for right of way acquisition. Agency may submit a written request to State's Liaison for a time extension beyond the twenty (20) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.
 - b) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth federal fiscal year following the federal fiscal year in which the federal-aid funds were authorized. Agency may submit a written request to State's Liaison for a time extension beyond the ten (10) year limit with no repayment of federal funds and State will forward the request to FHWA. FHWA may approve this request if it is considered reasonable.

14. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that the Project is completed in conformance with approved plans and specifications.
15. State shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. State shall pay all reimbursable costs of the Project. Agency may request a statement of costs-to-date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

STANDARDS

16. Agency agrees that minimum design standards on all local agency jurisdictional roadway or street projects on the National Highway System (NHS) and projects on the non-NHS shall be the American Association of State Highway and Transportation Officials (AASHTO) standards and be in accordance with *State's Oregon Bicycle & Pedestrian Design Guide* (current version). Agency shall use either AASHTO's *A Policy on Geometric Design of Highways and Streets* (current version) or State's Resurfacing, Restoration and Rehabilitation (3R) design standards for 3R projects. Agency may use AASHTO for vertical clearance requirements on Agency's jurisdictional roadways or streets.
17. Agency agrees that if the Project is on the Oregon State Highway System or State-owned facility, that design standards shall be in compliance with standards specified in the current *ODOT Highway Design Manual* and related references. Construction plans for such projects shall be in conformance with standard practices of State and all specifications shall be in substantial compliance with the most current *Oregon Standard Specifications for Highway Construction* and current *Contract Plans Development Guide*.
18. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility any design element that does not meet *ODOT Highway Design Manual* design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS, regardless of funding source; any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval. FHWA shall review any design exceptions for projects subject to Focused Federal Oversight and retains authority for their approval.
19. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the *Manual on Uniform Traffic Control Devices and Oregon Supplement* as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

20. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

PRELIMINARY & CONSTRUCTION ENGINEERING

21. Preliminary engineering and construction engineering may be performed by either a) State, b) Agency, c) State-approved consultant, or d) certified agency. Engineering work will be monitored by State or certified agency to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by either a) State, b) State-approved consultant or c) certified agency. State shall review and approve Project plans, specifications and cost estimates. State shall, at project expense, review, process and approve, or submit for approval to the federal regulators, all environmental statements. State or certified agency shall, if they prepare any of the documents identified in this paragraph, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
22. Agency may request State's two-tiered consultant selection process as allowed by OAR 137-048-0260 to perform architectural, engineering, photogrammetry, transportation planning, land surveying and related services (A&E Services) as needed for federal-aid transportation projects. Use of the State's processes is required to ensure federal reimbursement. State will award and execute the contracts. State's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, Title 49 CFR part 18, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or the consultant prior to receiving authorization from State to proceed.
23. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
24. State or certified agency shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.
25. Upon State's or certified agency's award of a construction contract, State or certified agency shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in State's *Manual of Field Test Procedures*, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
26. State shall, as a Project expense, assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). State's liaison shall process reimbursement for federal participation costs.

**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF
TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT**

27. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, Agency agrees to adopt State's DBE Program Plan, available at http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe_program.aspx#plan. Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. Agency agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. State's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

DISADVANTAGED BUSINESS ENTERPRISES (DBE) OBLIGATIONS

28. State and Agency agree to incorporate by reference the requirements of 49 CFR part 26 and State's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."

29. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.

30. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. State and Agency agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

RIGHT OF WAY

31. Agency and the consultant, if any, agree that right of way activities shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FAPG, CFR, and the *ODOT Right of Way Manual*, Title 23 CFR part 710 and Title 49 CFR part 24. State, at Project expense, shall review all right of way activities engaged in by Agency to ensure compliance with all laws and regulations.
32. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of projects. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project provided Agency or the consultant are qualified to do such work, as required by the *ODOT Right of Way Manual*, and Agency has obtained prior approval from State's Region Right of Way office to do such work.
33. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each Party. If the Project has the potential of needing right of way, to ensure compliance in the event that right of way is unexpectedly needed, a right of way services agreement will be required. State, at Project expense, shall be responsible for requesting the obligation of project funding from FHWA. State, at Project expense, shall be responsible for coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through State's Liaison, who will forward the request to State's Region Right of Way office on all projects. Agency must receive written authorization to proceed from State's Right of Way Section prior to beginning right of way activities. All projects must have right of way certification coordinated through State's Region Right of Way office to declare compliance and project readiness for construction (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on a project). Agency shall contact State's Liaison, who will contact State's Region Right of Way office for additional information or clarification on behalf of Agency.
34. Agency agrees that if any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
35. Agency ensures that all project right of way monumentation will be conducted in conformance with ORS 209.155.
36. State and Agency grants each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

RAILROADS

37. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the State's Liaison, who will contact State's Railroad Liaison on behalf of Agency. Only those costs allowable under Title 23 CFR part 140 subpart I, and Title 23 part 646 subpart B shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing and at Project expense, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

38. Agency shall follow State established statutes, policies and procedures when impacts occur to privately or publicly-owned utilities. Policy, procedures and forms are available through the State Utility Liaison or State's Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison. Only those utility relocations, which are eligible for reimbursement under the FAPG, Title 23 CFR part 645 subparts A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. Agency may send a written request to State, at Project expense, to arrange for utility relocations/adjustments lying within Agency jurisdiction. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties. Agency shall not perform any utility work on state highway right of way without first receiving written authorization from State.

GRADE CHANGE LIABILITY

39. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
40. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
41. Agency, if a City, by execution of the Project Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Project Agreement.

MAINTENANCE RESPONSIBILITIES

42. Agency shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. State may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

CONTRIBUTION

43. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

44. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
45. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

ALTERNATIVE DISPUTE RESOLUTION

46. The Parties shall attempt in good faith to resolve any dispute arising out of this Project Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

WORKERS' COMPENSATION COVERAGE

47. All employers, including Agency, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be included. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS – pursuant to Form FHWA-1273, Required Contract Provisions

48. Agency certifies by signing the Project Agreement that:
- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any

cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

**LOCAL AGENCY AGREEMENT
SCENIC BYWAY PROGRAM PROJECT
Pacific Coast National Scenic Byway
Agate Beach Wayside
City of Newport**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State," and the CITY OF NEWPORT, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. US Route 101 (Oregon Coast Highway) and the Agate Beach Wayside are part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. The Oregon Coast Highway has been designated an "All American Road Scenic Byway". Improvements made to local roads as part of this project are on city right of way under the jurisdiction and control of Agency.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to improve recreation access to Agate Beach, hereinafter referred to as "Project". Project includes, but is not limited to, improving access from Oregon Coast Highway to Agate Beach, redesigning the wayside and parking area and local road improvements. The location of the Project is approximately as shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof. The Project scope and schedule, progress report requirements, and Project Change Request process are described in "Exhibit B," attached hereto and by this reference made a part hereof. Agency agrees to the conditions set forth in Exhibit B.
2. The Project will be conducted as a part of the Scenic Byway Program under Title 23, United States Code. The total Project cost is estimated at \$697,120, which is subject to change. The SAFETEA-LU federal funds are limited to \$557,696 or eighty (80) percent of the total eligible Project costs, whichever is less. Eligible costs for this Project will be reimbursed at eighty (80) percent until the \$557,696 limit is reached.

Agency shall be responsible for the match for the federal funds and any portion of the Project which is not covered by federal funding.

3. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
5. The funds for this Project are subject to the following conditions:
 - a. FHWA asks that all National Scenic Byways and All-American Roads include the America's Byways TM logo in publications, videos, and on other materials produced with National Scenic Byway Program funds. Where possible and in addition to the logo, include the following statement: "Funded in part by the Federal Highway Administration".
 - b. Photos, brochures, plans, designs, and videos funded with the National Scenic Byways Program funds will be made available to the National Scenic Byways Program for use in presentations, publications, and posting on the websites.
6. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or three (3) calendar years following the date of final execution, whichever is sooner.
7. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
8. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and

settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.

9. This Agreement may be terminated by mutual written consent of both Parties.
10. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
11. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
12. If Agency causes the Project to be canceled or terminated for any reason prior to its completion, Agency shall reimburse State for any costs that have been incurred by State on behalf of Project.
13. The Special and Standard Provisions attached hereto, marked "Attachments 1 and 2," respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2.

14. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and will, upon Agency's breach of any such conditions that requires the State to return funds to the FHWA, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount will be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
15. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
16. State's Project Manager for this Project is Michael S. Starnes, P.L.S., ODOT Region 2 Local Agency Liaison, 455 Airport Road SE, Building B, Salem, Oregon 97301-5395; (503) 986-6920; Michael.s.starnes@odot.state.or.us or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
17. The Scenic Byway Program Manager is Pat Moran, ODOT, Active Transportation Section, 555 13th Street NE, Salem, Oregon 97301; phone: (503) 986-4261; email: Patrick.m.moran@odot.state.or.us or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
18. Agency's Project Manager for this Project is Derrick Tokos, Community Development Director, City of Newport, 169 SW Coast Highway, Newport, Oregon 97365; (541) 574-0626; d.tokos@newportoregon.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
19. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed will constitute an original.
20. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement will not constitute a waiver by State of that or any other provision.

City of Newport/ODOT
Agreement No. 29099

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #17940) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

Signature Page Follows

CITY OF NEWPORT, by and through its elected officials

By Sandra Rommagosa
Mayor

Date July 1, 2013

By Ted Smith
City Manager

Date 6.28.2013

APPROVED AS TO LEGAL SUFFICIENCY

By See next page
City Legal Counsel

Date _____

Agency Contact:

Derrick Tokos
Community Development Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
(541) 574-0626
d.tokos@newportoregon.gov

State Contacts:

Michael S. Starnes, P.L.S., Local Agency Liaison
Region 2 - Local Program Unit
455 Airport Road SE, Building B
Salem, Oregon 97301-5395
503-986-6920
michael.s.starnes@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By See next page
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Active Transportation Section Manager

Date _____

By _____
Scenic Byway Program Manager

Date _____

By _____
Region 2 Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

Key No. 17940

City of Newport/ODOT
Agreement No. 29099

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

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Signature Page Follows

CITY OF NEWPORT, by and through its elected officials

By See previous page
Mayor

Date —

By —
City Manager

Date —

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
City Legal Counsel

Date June 28, 2013

Agency Contact:

Derrick Tokos
Community Development Director
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
(541) 574-0626
d.tokos@newportoregon.gov

State Contacts:

Michael S. Starnes, P.L.S., Local Agency Liaison
Region 2 - Local Program Unit
455 Airport Road SE, Building B
Salem, Oregon 97301-5395
503-986-6920
michael.s.starnes@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By [Signature]
Highway Division Administrator

Date 7/30/13

APPROVAL RECOMMENDED

By [Signature]
Active Transportation Section Manager

Date 7/24/13

By [Signature]
Scenic Byway Program Manager

Date 7/23/13

By [Signature]
Region 2 Manager

Date 07-09-13

APPROVED AS TO LEGAL SUFFICIENCY

By [Signature]
Assistant Attorney General

Date 7/16/13

Key No. 17940

City of Newport/ODOT
Agreement No. 29099

Pat Moran, Scenic Byway Program Manager
ODOT, Active Transportation Section
555 13th Street NE
Salem, Oregon 97301
(503) 986-4261
Patrick.m.moran@odot.state.or.us

EXHIBIT A – Project Location Map

Pacific Coast NSB: Agate Beach Wayside (Newport) – Key No. 17940

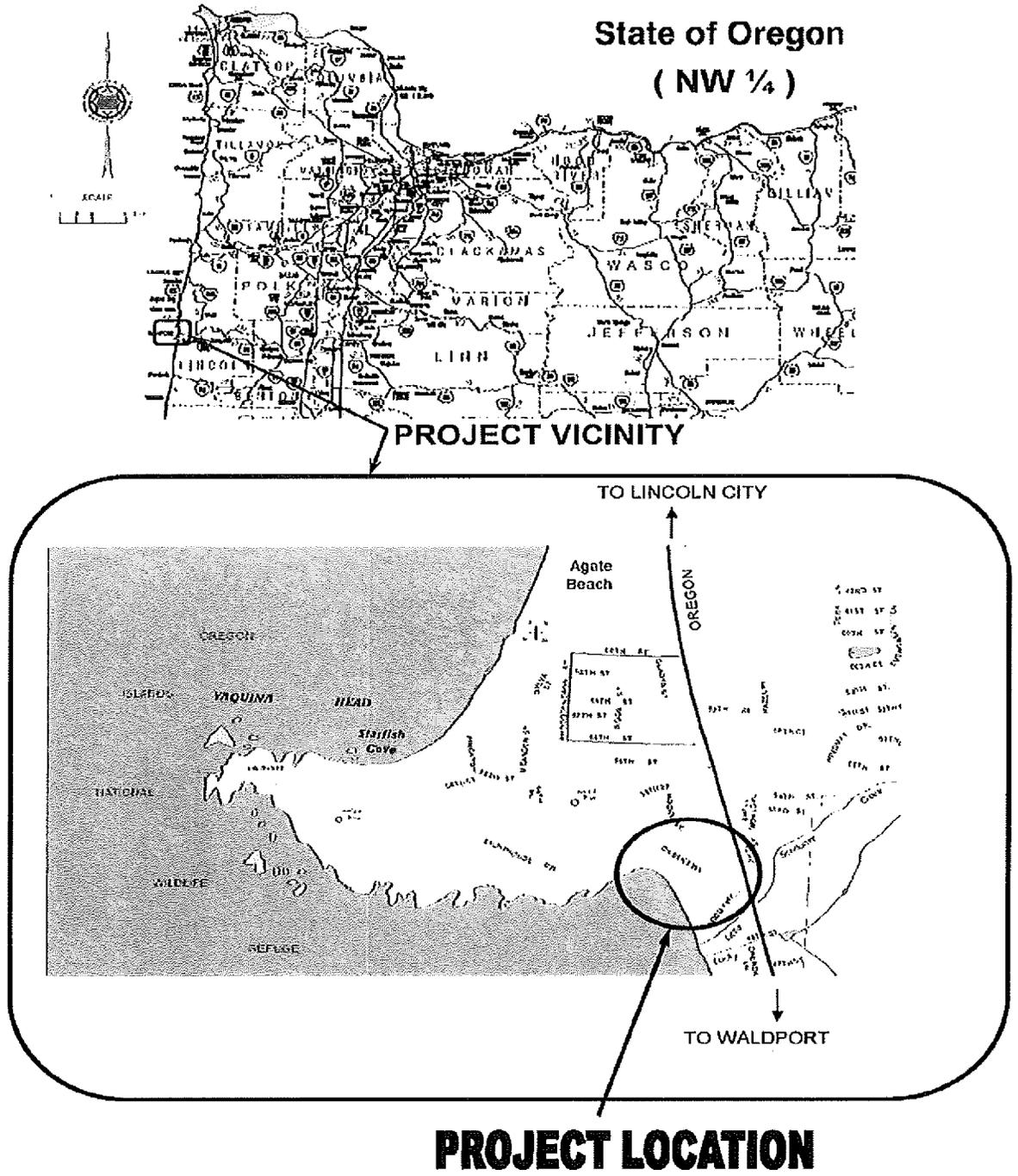


EXHIBIT B
Progress Reports and Project Change Request Process

Agreement No. 29099

Key Number: 17940

Project Name: Pacific Coast National Scenic Byway, Agate Beach Wayside

1. Project Description

Project includes, but is not limited to, improving access from the Oregon Coast Highway to Agate Beach, redesigning the wayside and parking areas and local road improvements.

2. This Project is subject to progress reporting and project change process as stated in Paragraphs No. 3 through No. 5 below.

3. **Monthly Progress Reports (MPR)** - Agency shall submit monthly progress reports using MPR Form 734-2862, attached by reference and made a part of this Agreement. The Monthly Progress Report is due by the 5th day of each month, starting the first month after execution of this Agreement, and continuing through the first month after State issues Project Acceptance (Second Note) for the Project's construction contract.

The fillable MPR form and instructions are available at the following web site:
<http://www.oregon.gov/ODOT/HWY/LGS/pages/online.aspx>

4. **Project Milestones** - The Parties agree that the dates shown in Table 1 constitute the intended schedule for advancing and completing the Project. Project Milestones may only be changed through amendment of this Agreement, after obtaining an approved Project Change Request.

Table 1: Project Milestones

| | Milestone Description | Completion Date |
|---|-----------------------------------------------------------------------------------------------------------|------------------------|
| 1 | Obligation (Federal Authorization) of Scenic Byway funds for the Preliminary Engineering phase of Project | 07/15/2013 |
| 2 | Obligation (Federal Authorization) of Scenic Byway funds for the Construction phase of Project | 11/10/2014 |
| 3 | Project Completion based on State issuing Project Acceptance or "Second Note" | 11/10/2015 |

5. **Project Change Request (PCR) Process** - Agency must obtain approval from State's Project Manager and State's Scenic Byway Program Manager for changes to the Project's scope, schedule, or budget as specified in Paragraphs No. 5a, 5b and 5c, below. Agency shall be fully responsible for all costs that occur outside the established Project scope, schedule or budget and prior to an approved PCR. Amendments to this Agreement are required for all approved PCRs.
- a. **Scope** - A PCR is required for any significant change or reduction in the scope of work described in the Project Description (Paragraph No. 1 of this Exhibit).
 - b. **Schedule** - A PCR is required if Agency or State's Project Manager anticipate that any Project Milestone will be delayed by more than ninety (90) days, and also for any change in schedule that will require amendment of the Statewide Transportation Improvement Program (STIP).
 - c. **Budget** - Total Project Cost and approved Scenic Byway funds for the Project are controlled by Terms of Agreement Paragraph No. 2 of this Agreement. A PCR is required to obtain State's approval for increased Scenic Byway funds for any phase of the Project.
6. **PCR Form** - Agency must submit all change requests using PCR Form 734-2863, attached by reference and made a part of this Agreement. The PCR Form is due no later than thirty (30) days after the need for change becomes known to Agency. The PCR shall explain what change is being requested, the reasons for the change, and any efforts to mitigate the change. A Project Change Request may be rejected at the discretion of State's Scenic Byway Program Manager.

The fillable PCR form and its instructions are available at the following web site:
<http://www.oregon.gov/ODOT/HWY/LGS/pages/online.aspx>

7. **Consequence for Non-Performance** - If Agency fails to fulfill its obligations in Paragraphs No. 3 through No. 6 above, or does not assist in advancing the Project or perform tasks that the Agency is responsible for under the Project Milestones, State's course of action through the duration of Agency's default may include: (a) restricting Agency consideration for future funds awarded through State's Active Transportation Section, then (b) withdrawing unused Project funds, and then (c) terminating this Agreement as stated in Terms of Agreement, Paragraphs No. 10 of this Agreement.

**ATTACHMENT NO. 1 to Agreement No. 29099
SPECIAL PROVISIONS**

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments.
2. The Parties agree that the delivery date for the Project's "Plans, Specifications, and Estimates" (PS&E) package is October 10, 2014. State may withdraw all National Scenic Byway Funds that are not obligated on or before November 15, 2015, which is twelve (12) months after the obligation date assigned by State. In that event, State will have no obligation to fund any remaining phases of work through the National Scenic Byways program.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, the Project cost is defined as the engineer's estimate plus 10 percent.
4. State may make available Region 2's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
5. Indemnification language in the Standards Provisions, Paragraphs 46 and 47; and Paragraph 4 in regards to tort claims, shall be replaced with the following language:
 - a. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
 - b. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the

amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

- c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
 - d. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
6. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
 7. Maintenance responsibilities will survive any termination of this Agreement.

ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS

JOINT OBLIGATIONS PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

**REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION
(USDOT) FINANCIAL ASSISTANCE AGREEMENT**

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify

Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

PROJECT ACTIVITIES

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
 - a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has

City of Newport/ODOT
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written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

- b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which

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the local agency participates. The cost of this audit can be partially prorated to the federal program.

30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710, Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).
33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
 - a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.
37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".
39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Design Guide", unless otherwise requested by Agency and approved by State.
40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".
41. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.

42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.
44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.
45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

49. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

50. Agency certifies by signing the Agreement that:

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #.VIII.B.
Meeting Date: January 5, 2015

Agenda Item:

APPROVAL OF AMENDMENT NO. 3 (28487) FOR THE LOCAL AGENCY AGREEMENT, FLEXIBLE FUNDS PROGRAM 2011 FOR THE US HIGHWAY 101 PEDESTRIAN SAFETY IMPROVEMENT PROJECT

Background:

The US Highway 101 Pedestrian Safety Improvement Project continues to move forward. ODOT has indicated that the total project cost estimate for these crossings will require a \$36,000 increase in project funds. Based on the City's significant increase in our local commitment, the ODOT Bicycle and Pedestrian Program is fronting the entire \$36,000 to meet the project cost estimate.

In order to proceed, it is necessary for the City Council to accept an increase in ODOT funding of the \$36,000.

Recommendation Action:

I recommend the Council consider the following motion:

I move approval of Amendment No. 3 for the Local Agency Agreement, Flexible Funds Program 2011 for the US Highway 101 Pedestrian Safety Improvement Project, and authorize the Mayor and City Manager to sign the amendment on behalf of the City of Newport.

Fiscal Effects:

This amendment will not increase the City's cost for this project.

Alternatives:

None recommended.

Respectfully submitted,

Spencer R. Nebel
City Manager



Agenda Item # VIII.B
Meeting Date January 5, 2015

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Approval of Amendment No 3 (28487) for the Local Agency Agreement, Flexible Funds Program 2011 for the US Hwy 101 Pedestrian Safety Improvements Project

Prepared By: TEG Dept Head Approval: TEG City Manager Approval:

Issue Before the Council:

Approval of Amendment No 3 for the Local Agency Agreement, Flexible Funds Program 2011 for the US Hwy 101 Pedestrian Safety Improvements Project

Staff Recommendation:

Approve the amendment

Proposed Motion:

I move to approve Amendment Number 3 for the Local Agency Agreement, Flexible Funds Program 2011 for the US Hwy 101 Pedestrian Safety Improvements Project and authorize the Mayor and the City Manager to sign the amendment on behalf of the City of Newport.

Key Facts and Information Summary:

This amendment will revise the language in Paragraph 2b of Amendment No. 2 and increase the Bicycle & Pedestrian fund limit for this project from \$250,000 to \$286,000. The total project cost estimate will also be increased by this \$36,000 amount. This increase in State funding was approved by the ODOT Bicycle & Pedestrian program and was necessary before this project could be processed for the December 11th bid opening. This increase is based upon the engineer's cost estimate submitted with the final PS&E document package.

Other Alternatives Considered:

None.

City Council Goals:

N/A

Attachment List:

- Amendment No 3 (28487) for the Local Agency Agreement, Flexible Funds Program 2011 for the US Hwy 101 Pedestrian Safety Improvements Project

Fiscal Notes:

Total project cost is estimated at \$938,000. City of Newport's financial contribution remains unchanged at \$202,000.

**AMENDMENT NUMBER 03
LOCAL AGENCY AGREEMENT
FLEXIBLE FUNDS PROGRAM 2011
Non-Highway Transportation Project
US 101 Pedestrian Safety Improvements
City of Newport**

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State," and the **CITY OF NEWPORT**, acting by and through its elected officials, hereinafter referred to as "Agency," entered into an Agreement on July 19, 2012, Amendment Number 1 on February 25, 2014, and Amendment Number 2 on May 9, 2014. Said Agreement covers the improvement of crosswalks on US 101 north of Yaquina Bridge.

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase the overall cost and add \$36,000 in State Bike/Pedestrian funds toward the Project. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

TERMS OF AGREEMENT, Paragraph 2, Page 2, which reads:

2. The total Project cost is estimated at \$902,000. The Project estimate is subject to change.
 - a. A portion of the Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The STP funds for this Project will be limited to \$450,000 and are for the Preliminary Engineering, Right of Way, and Construction phases of the Project.
 - b. A portion of the Project will be conducted as a part of the Bicycle and Pedestrian Program under the State Highway Trust Fund. The Bicycle and Pedestrian funds are limited to \$250,000 and are for the Construction phase of the Project.
 - c. The Project will be financed at the maximum allowable federal participating amount for the STP funds and 100 percent for the Bicycle and Pedestrian funds. Agency is responsible for the match for the federal STP funds and all non-participating costs, including all costs in excess of the available federal and Bicycle and Pedestrian funds.

Shall be deleted in its entirety and replaced with the following:

2. The total Project cost is estimated at \$938,000. The Project estimate is subject to change.
 - a. A portion of the Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The STP funds

for this Project will be limited to \$450,000 and are for the Preliminary Engineering, Right of Way, and Construction phases of the Project.

- b. A portion of the Project will be conducted as a part of the Bicycle and Pedestrian Program under the State Highway Trust Fund. The Bicycle and Pedestrian funds are limited to \$286,000 and are for the Right of Way and Construction phases of the Project.
- c. The Project will be financed at the maximum allowable federal participating amount for the STP funds and 100 percent for the Bicycle and Pedestrian funds. Agency is responsible for the match for the federal STP funds and all non-participating costs, including all costs in excess of the available federal and Bicycle and Pedestrian funds.

This Amendment may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program (STIP), (Key No. 18122) that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE FOLLOWS

CITY OF NEWPORT, by and through its
elected officials

By _____
Mayor

Date _____

By _____
City Manager

Date _____

APPROVED AS TO FORM

By _____
City Legal Counsel

Date _____

Agency Contact:

Tim Gross, Public Works Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
Phone: (541) 574-3369
Email: t.gross@newportoregon.gov

State Contact:

Michael Starnes, Local Agency Liaison
ODOT, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301
Phone: (503) 986-6920
Email: michael.s.starnes@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Director

Date _____

APPROVAL RECOMMENDED

By _____
Planning Section Manager

Date _____

By _____
Active Transportation Section Manager

Date _____

By _____
Bicycle and Pedestrian Program Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Amendment No. 2 signed by David B.
Hatton on 5/1/2014



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #.VIII.C.
Meeting Date: January 5, 2015

Agenda Item:

CONSIDERATION OF RESOLUTION 3701, AUTHORIZING GRANT FUNDING IN AN AMOUNT NOT TO EXCEED \$1 MILLION DOLLARS FOR THE US DEPARTMENT OF INTERIOR BUREAU OF RECLAMATION FOR A SMARTWATER GRANT FOR THE CITY'S AUTOMATED METER READING SYSTEM

Background:

Public Works Director, Tim Gross, in conjunction with Chase Park grants has been coordinating the development of a grant application for up to one million dollars to fund the City's automated meter reading conversion project. The cost share on this grant is 50 percent or \$500,000 of the \$1,000,000 as requested in the award. The grant application is due on January 14, 2015.

I appreciate the efforts of Public Works Director, Tim Gross, and Tia Cavender, of Chase Parks Grants to identify this particular grant program to meet this need as we have previously identified in our budgeting processes.

Recommended Action:

I recommend that the City Council consider the following motion:

I move to approve Resolution 3701, Requesting Funding for the US Department of Interior Bureau of Reclamation for a water "SMARTWater" Grant in the amount of \$1 million for the City's Automated Meter Reading System.

Fiscal Effects:

Five Hundred Thousand Dollars (\$500,000) is budgeted during the current fiscal year for the meter project. This was intended to be the first phase of the meter replacement program.

Alternatives:

None Recommended.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. R. Nebel".

Spencer R. Nebel
City Manager



Agenda Item # VIII.C
Meeting Date January 5, 2015

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Approval of Resolution 3701 Requesting Funding from the U.S Department of the Interior Bureau of Reclamation for a WaterSMART Water Grant for the City's Automatic Meter Reading System

Prepared By: TEG Dept Head Approval: TEG City Manager Approval:

Issue Before the Council:

Approval of Resolution 3701 requesting funding from the U.S Department of the Interior Bureau of Reclamation for a WaterSMART Water Grant for the City's automatic meter reading system.

Staff Recommendation:

Approve the Resolution

Proposed Motion:

I move to approve Resolution 3701 requesting funding from the U.S Department of the Interior Bureau of Reclamation for a WaterSMART Water Grant in the amount of \$1,000,000 for the City's automatic meter reading system.

Key Facts and Information Summary:

The WaterSmart Water & Energy (W&EE) grant program is available to support projects that conserve and use water more efficiently, increase the use of renewable energy, protect endangered and threatened species, facilitate water markets, or carry out other activities to address climate-related impacts on water or prevent water-related crisis or conflict. A summary of this grant and description of eligible projects is attached to this memo.

City staff in conjunction with Chase Park Grants is currently developing a grant application for up to \$1,000,000 to fund the City's Automatic Meter Reading (AMR) conversion project. A condition of this grant application is a resolution from Council supporting the application and confirming the City's ability to conform to the grant requirements and cost share. The cost share on this grant is 50% or \$500,000 if the whole \$1,000,000 is requested and awarded.

The resolution also gives the City Manager the authority to commit to grant assurances if the grant is awarded. Since this is only an application at this time, this portion of the resolution is more of a formality. City staff will bring the Grant contract back to the Council for approval if awarded, before any commitment to grant assurances or financial contribution would take place.

Two other municipalities have been awarded \$1,000,000 grants through this program for AMR installations, including one community very close in system size to Newport. City staff and Chase Park Grants met with the Bureau of Reclamation staff who coordinate the program in Denver at the beginning of November. It is our understanding that our project has the potential to see considerable water savings as a result of its completion, and as a result our application should see relatively high scores when evaluated and be very competitive.

The grant application is due on January 14, 2015. It is Staff's recommendation that Council approve this resolution and authorize the grant application.

Other Alternatives Considered:

None.

City Council Goals:

Goal 3.0 Water and Sewer Improvements

3.4 Pursue the utilization of a radio read water meter system to reduce operational costs and provide immediate detection of leaks and other water problems (2).

Attachment List:

- Resolution No. 3701
- Grant Summary - WaterSMART Water & Energy Efficiency Grant FY2015

Fiscal Notes:

In FY15, the City budgeted \$500,000 toward the implementation of this project. There is some confusion between the guidance documents for the grant and what we are being told by the staff at the Bureau of Reclamation regarding whether or not funds expended in FY15 would be eligible as the matching funds. If so, then the City will have already met the match requirements if all of the budgeted funds are expended this fiscal year. If not, then the City will need to budget an additional \$500,000, minus the staff time dedicated to the project, in FY15/16. It was already the intent of Staff to request this funding in FY15/16 to continue with the AMR conversion, and if the grant is awarded, it would offset the necessity to fund the balance of this project in future fiscal years. The total estimated project cost to convert the City to a full AMR system per the cost benefit analysis published in 2011 was approximately \$1.5M.

RESOLUTION NO. 3701

CITY OF NEWPORT

A RESOLUTION REQUESTING FUNDING
FROM THE U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
FOR A WATERSMART WATER GRANT
FOR THE CITY'S AUTOMATIC WATER METER READING PROGRAM

WHEREAS, The U.S. Department of Interior Bureau of Reclamation provides funding opportunities for water and energy efficiency projects as part of the Bureau of Reclamation's WaterSMART Water and Energy Efficiency Program; and

WHEREAS, the City of Newport deems it beneficial to apply to the U.S. Department of Interior Bureau of Reclamation for grant funding in an amount not to exceed \$1,000,000 for funding to help defray the cost of replacing existing water meters with more accurate and efficient automated meter reading equipment; and

WHEREAS, in accordance with the rules and regulations of the U.S. Department of Interior Bureau of Reclamation WaterSMART Program, which governs the procedures of making such application, the governing body of the city is required to adopt a resolution to accompany such application.

THE CITY OF NEWPORT RESOLVES AS FOLLOWS:

Section 1. The U.S. Department of Interior Bureau of Reclamation under the WaterSMART Water and Energy Efficiency Program is hereby requested to grant funding in an amount not to exceed \$1,000,000 to the City of Newport to help defray the cost of replacing existing water meters with more accurate and efficient automated meter reading equipment as described in the application for financial assistance.

Section 2. The City Manager of the City of Newport is hereby authorized to execute and submit to the U.S. Department of Interior Bureau of Reclamation WaterSMART Water and Energy Efficiency Program a grant application for such financial assistance.

Section 3. The City Manager is further specifically authorized to make the required assurances to the U.S. Department of Interior Bureau of Reclamation in accordance with the rules, regulations, and policies of the U.S. Department of Interior Bureau of Reclamation WaterSMART Water and Energy Efficiency Program.

Section 4. The additional funding in support of the project, in the amount of up to \$500,000 (50% match) will be provided through sources of capital funding available to the city, such as water rates, state revolving loan funds and revenue bonds.

Section 5. If the application is selected for an award, the city will work with the U.S. Department of Interior Bureau of Reclamation to meet established deadlines for entering into a grant funding agreement.

Section 6. A certified copy of this resolution shall be attached to the grant application herein authorized to be prepared and submitted to the U.S. Department of Interior Bureau of Reclamation WaterSMART Water and Energy Efficiency Program.

Section 7. This resolution will become effective on adoption.

Adopted by a _____ to _____ vote of the Newport City Council on January 5, 2015.

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

Grant Summary

WaterSMART Water & Energy Efficiency Grant FY2015



U.S. Department of Interior Bureau of Reclamation

Updated December 5, 2014

The following report provides a summary of research specific to the U.S. Department of Interior Bureau of Reclamation's Water & Energy Efficiency (W&EE) grant for fiscal year 2015.

KEY DATES

| | |
|--------------------------------|--------------------------|
| Funding announcement released: | October 30, 2014 |
| Application deadline: | January 14, 2015 |
| Selected projects announced: | Estimated June 2015 |
| Funds distributed: | Estimated September 2015 |

PROGRAM SUMMARY

The WaterSMART Water & Energy Efficiency grant program is available to support projects that conserve and use water more efficiently, increase the use of renewable energy, protect endangered and threatened species, and facilitate water markets. Eligible projects are divided into four distinct Task categories described below.

Task A: Water Conservation. Projects that result in quantifiable and sustained water savings or improved water management. Eligible projects include, but are not limited to:

- Canal lining and piping: Projects that line or pipe canals resulting in conserved water. For example, installing new proven lining materials, converting open canals to pipeline, and constructing conveyance improvements or intertie systems.
- Municipal Metering: Projects that install meters, resulting in measureable water savings. For example, installing water service meters or installing distribution systems meters associated with production and/or leakage quantification.
- Irrigation Flow Measurement: Projects that improve measurement accuracy and result in reduced spills and over-deliveries to irrigators. For example, installing weirs, flumes, ramps, etc. in open channels and installing meters in pressurized pipes.
- SCADA and Automation: Projects that install SCADA and/or automation components that provide water savings when irrigation delivery system operational efficiency is improve spills, over-deliveries, and seepage. For example, installing SCADA components for remote monitoring of flow rates, water elevations, controls devices openings, and installing automation components that allow for remote operation of gates and valves.
- Groundwater Recharge: Projects that provide savings when surface water storage evaporation is reduced and/or surface runoff is intercepted for recharge. For example, installing recharge ponds, installing surface runoff interception systems, and removing impervious surfaces.

- **Landscape Irrigation Measures:** Projects that provide water savings by reducing outdoor water usage. For example, turf removal, Smart irrigation controllers, and high-efficiency sprinkler heads.
- **High-Efficiency Indoor Appliances and Fixtures:** Projects that promote installation of high-efficiency indoor appliances and fixtures to provide water savings for municipal water entities. For example, installing high-efficiency toilets, clothes washers, faucets, etc.

Task B: Energy-Water Nexus. Projects that increase the use of renewable energy sources in the management and delivery of water, and projects that upgrade existing water management facilities resulting in quantifiable and sustained energy savings. Eligible projects include but are not limited to the examples below.

Renewable Energy Projects Related to Water Management and Delivery

- Installing small-scale hydroelectric, solar-electric, wind energy, geothermal power systems, or other facilities that enable use of these or other renewable energy sources. For example, replacing fossil fuel powered pumps with renewable energy based pumps, and installing low-head hydrokinetic power generation units in a water system.
- Producing and using biomass or renewable fuels, including woody and herbaceous crops and residues, solid waste, sewage, and liquid fuels from agricultural products. For example, using technology that would transform algae into a renewable oil source.

Increasing Energy Efficiency in Water Management and Delivery

- Retrofitting or modernizing water management facilities or equipment to increase energy efficiency. For example, installing Variable Frequency Drives, Advanced Meter Readings, or “smart grid” technology on pump and water systems.
- Quantifiably reducing energy consumption through water conservation projects that reduce pumping or diversions.

Task C: Benefits to Endangered Species. Projects that benefit federally listed threatened or endangered species or endangered critical habitat affected by a Reclamation facility or action. For example, improving habitat, restoring habitat, making additional water available, managing vegetation, installing fish bypasses and fish screens, and improving hatcheries.

Task D: Water Markets. Projects that implement or use water markets to make water available to meet other existing water supply needs or uses including agricultural, municipal, or dedication to instream flows. Activities include projects that:

- Develop a water market that would provide a mechanism for willing participants to buy, sell, lease, or exchange water to avoid or reduce water conflicts.
- Make conserved water available for agricultural, municipal, or instream uses through a sale, lease, or exchange to a new water user.

ELIGIBILITY

Projects eligible for W&EE funds must be located in the following Western States or territories: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, American Samoa, Guam, the Northern Mariana Islands, or the Virgin Islands.

Eligible entities include: states, local government agencies, Indian tribes, irrigation districts, water districts, or other organizations with water or power delivery authority. Those ineligible for WEEG funds include Federal government entities, institutions of higher education, and individuals.

Ineligible Projects

1. Projects considered normal operations, maintenance and repairs in which existing infrastructures are improved without increasing efficiency or effectiveness of water distribution. For example, improving a facility to operate as originally designed, replacing broken meters with new meters of the same type, or performing an activity on a recurring basis.
2. Any projects or project elements that are part of a congressionally authorized Title XVI project.
3. A project that proposes using Federal funding to purchase water.
4. Construction of buildings.
5. A project that proposes to conduct a pilot study to evaluate technical capability, economic feasibility, or viability for a full-scale implementation, or to test an unproven material or technology.

PROGRAM FUNDS/IMPLEMENTATION

Funding is awarded in two groups:

1. Funding Group I – Up to \$300,000 in Federal funds will be available per award will be available for smaller, on-the-ground projects that take up to two years to complete. The majority of awards will support projects in Funding Group I.
2. Funding Group II – Up to \$1,000,000 in Federal funds provided through this FOA will be available for larger, phased on-the-ground projects that may take up to 3 years to complete. No more than \$500,000 in Federal funds will be provided within a given Federal fiscal year to complete each phase of a selected project.

In general, Funding Group I projects should be completed within 2 years of award. Funding Group II projects should not exceed 3 years in total duration (e.g., a maximum of three year-long phases). Funding Group II projects should be substantially completed as part of that year's phase. Recipients must demonstrate sufficient progress to receive funding for subsequent phases.

There is no limit to the number of W&EE applications an eligible entity can submit; however, the amount awarded per entity is capped at \$1,000,000 for W&EE per funding cycle.

Applicants must be able to provide at least 50% of the total project costs from non-Federal sources, either in cash or as in-kind contributions. Funding Group II projects are not required to have secured cost share funding for the entire project at the time of award. However, the applicant must provide sufficient evidence that cost share for the first year will be available by the time the project begins, and present a plan and schedule for securing the cost share for subsequent phases of the project.

APPLICATION & EVALUATION PROCESS

- The application must include a list of all required permits and approvals for the proposed project. Permits and approvals don't need to be obtained prior to application submission. However, projects with renewable energy components may require additional permitting and thus the permitting process should be under way in order for the project to be completed within the W&EE required timeframe.
- All projects must comply with Reclamation's Environmental and Cultural Resources requirements. Under no circumstances may any ground-disturbing work be started on a proposed project prior to completion of the environmental compliance and without Reclamation's explicit authorization to proceed.
- The Application Review Committee (ARC) for the W&EE program is likely to include 15 panel members representing Reclamation staff from various regions.
- Applications are scored by group; typically the Group II category is much more competitive than Group I.
- Reviewers first select Group II awards; the remaining funds are used to support Group I projects.
- Group II applications must incorporate aspects of two or more Task categories. Group II submissions that only address one Task category will NOT be competitive enough to win in Group II and will be ineligible for Group I funding.
- Applicants should address each evaluation criterion item specifically. Applicants are encouraged to cut and paste criterion items from the funding opportunity description to make sure all items are adequately addressed. Missing items will result in a reduced score.
- Incorporating recommendations from one of the completed WaterSMART Basin Studies may increase a proposal's overall score.
- Applications for projects involving SCADA systems must have solid, empirical data to support the expected water conservation and energy efficiency benefits.
- In 2014, Reclamation funded 36 projects totaling \$17.8M.

ADDITIONAL INFORMATION

For more information about this grant program or to request assistance with your grant application, please contact Tia Cavender at tia@chaseparkgrants.com.

Notice: This summary document does not constitute legal advice and should not be used as such. Chase Park Grants is not responsible for the accuracy, completeness, or content of submitted applications. Grant information is subject to change so applicants should review all government documents individually to determine if the program makes sense for their organization.



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: VIII.D.
Meeting Date: January 5, 2014

Agenda Item:

APPROVAL OF SPECIAL EVENT PERMIT FOR THE 2015 SEAFOOD AND WINE FESTIVAL - GREATER NEWPORT CHAMBER OF COMMERCE

Background:

The Seafood & Wine Festival will be held on February 19, 20, 21 and 22, 2015. The City Council has developed a process to consider waiver of a portion of the expenses incurred by the City to host this type of event. The costs incurred are from the Police, Public Works and Fire Departments, with the total expenses incurred by the City to support this event being \$14,101. A contribution of 35% of this amount would equal \$4,935 being paid for by room tax funds, with the balance of \$9,166 being invoiced to the Chamber of Commerce.

This is certainly a major community event, and I certainly appreciate the time, energy, and resources that the Newport Chamber puts into hosting this annual festival.

Recommended Action:

I recommend that the City Council consider the following motion:

I move approval of a Special Event Fee Waiver Request for the 2015 Seafood & Wine Festival in the amount of 35% of the estimated total City costs, or \$4,935 with these funds being transferred from the Transient Room Tax Fund to the General Fund, with the balance of the cost being invoiced to the Newport Chamber of Commerce, subject to the conditions outlined in the attached report.

Fiscal Effects:

There is sufficient funds appropriated in the Transient Room Tax Fund to cover this expense.

Alternatives:

None recommended.

Respectfully submitted,

Spencer R. Nebel
City Manager



Agenda Item #: VIII.D _____

Meeting Date 1/5/15 _____

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title Special Event Fee Waiver Request - 2015 Seafood and Wine Festival
- Greater Newport Chamber of Commerce _____

Prepared By: Peggy Hawker Dept Head Approval: ph City Mgr Approval: _____

Issue Before the Council: The issue before Council is whether to approve a special event permit fee waiver request for the Greater Newport Chamber of Commerce for the 2015 Seafood and Wine Festival to be held on February 19, 20, 21, 22, 2015.

Staff Recommendation: This is a City Council decision based on the criteria for special event fee waivers. Those criteria are:

1. Whether the event is a benefit to the community.
2. Whether the event creates positive publicity for the city.
3. The city's cost of providing services for/to the event.
4. Whether there are revenues that can be used to offset the impact of a fee waiver on the general fund.
5. Whether the event promotes education, public health, or public safety.
6. Whether the event is operated by a non-profit organization.
7. Whether the event has in the past, or is likely in the future, to take action that, if taken by a governmental entity, would be unconstitutional.

Proposed Motion: I move to approve the special event permit request for the Greater Newport Chamber of Commerce for its 38th annual Seafood and Wine Festival to occur on February 19, 20, 21, 22, 2015, as the event complies with special event permit criteria and guidelines, and to transfer \$4,935 from the Transient Room Tax Fund to the General Fund representing a contribution by the city of 35% of the estimated total city costs, the balance of which will be invoiced to the Chamber. A condition of approval is that the Community Development Department authorizes the temporary structure permit, and the temporary signage request, and that signs not be placed to create a hazard to pedestrian or vehicular traffic such as obstructing sight distance or other views. A further condition is that where public or emergency access could be blocked or impeded, event organizers are required to consult with the Fire and Police Departments prior to the event.

Key Facts and Information Summary: The Seafood and Wine Festival is an annual event in its 38th year. Its current location is on Port of Newport property next to the Rogue Brewery. The Festival will feature many vendors offering food, arts and crafts, wine and beer, and will occur during the low season. It has historically brought in many tourists for the weekend filling many lodging establishments, and it is projected to attract 15,000 - 20,000 spectators.

The Chamber has submitted the following documentation in support of the request:

1. Application for special event fee waiver.
2. Temporary structure permit application.
3. Letter of permission from the Port of Newport to use its property.
4. Site listing for signage.
5. Site location map that includes parking locations.
6. 2011 Master Control Plan with security information.
7. Certificate of insurance naming the city as an additional insured.

The city services requested include police, fire, and septic dumping. The city has reduced fees for these services in the past, and the Chamber is requesting the same consideration for the 2015 event. A copy of the Chamber's request was sent to all departments for input, and the impacted departments are the Police, Fire, and Public Works Departments.

The Police Department estimates its costs to be \$10,000 representing primarily additional overtime costs associated with monitoring the event.

The Public Works Department estimates its costs to be \$2,100, representing disposal of 6,000 gallons of septage at \$.35/gallon.

The Fire Department estimates its costs to be \$2,001, representing primarily Fire Marshal monitoring duties.

The total fiscal impact to the city is \$14,101.

Last year, the city's total cost was roughly \$16,715 which the city contributed approximately 35% (\$5,850) from Room Tax funds. Using a similar percentage contribution, this year's contribution would be \$4,935 (35% of \$14,101) with the balance of \$9,166 being invoiced to the Chamber.

Other Alternatives Considered: None.

City Council Goals: The request complies in part with the city's mission statement that follows: The Newport City Council and staff pledge to provide and manage city services utilizing sustainable practices. To enhance the livability of Newport, we strongly encourage citizen participation through volunteerism on committees and task forces. We will maintain fiscal responsibility and encourage community partners and agencies to achieve economic and sustainable development.

Attachment List: Special Event Permit Application
E-Mail from Mark Miranda Regarding Costs to Police Department
E-Mail from Rob Murphy Regarding Costs to Fire Department

Fiscal Notes: The fiscal impact will be any waived amount.



RECEIVED

OCT 29 2014

GREATER NEWPORT CHAMBER OF COMMERCE
CITY OF NEWPORT

555 S.W. Coast Highway • Newport, Oregon 97365-4934
(541) 265-8801 • FAX: (541) 265-5589 • 1-800-262-7844
website: <http://www.newportchamber.org>

October 22, 2014

City of Newport
City Recorder
Peggy Hawker
169 SW Coast Hwy
Newport Oregon 97365

Dear Peggy,

Attached is the Greater Newport Chamber of Commerce Special Events Application for the 2015 Newport Seafood & Wine Festival.

We are excited to once again to hold this annual festival, which over the years has drawn a large number of people (over 19,000 each year) to Newport, who come not only to enjoy the festival, but enjoy everything Newport has to offer.

The festival is held the last full weekend of February in order to provide an economic boost to our community during the slow winter months. Lodging establishments are typically 98-100% full for the weekend which helps to increase winter room tax collection significantly. Restaurants and retail have a marked increase in business during the weekend, as well as over 19 local non-profits have the opportunity to raise funds by participating in the festival, either pouring for wineries, or by contracting with the Chamber to provide services for the event.

We've also attached our site layout, our sign plan, request, and our 2015 control plan that is approved each year by Mark Miranda, Chief of Police-Newport. A certificate of Liability Insurance additionally naming the City of Newport for the 2015 event will be provided this month.

Please do not hesitate to contact me if you should need any additional information or documents to support this application.

Thank you for your time and consideration.

Sincerely,

Lorna Davis

Executive Director
Greater Newport Chamber of Commerce

SPECIAL EVENT PERMIT APPLICATION

Submit to: City Recorder
City of Newport
169 SW Coast Highway
Newport, Oregon 97365
p.hawker@thecityofnewport.net
541.574.0613

This application must be completed, signed, and submitted far enough in advance of the event to allow staff time to properly analyze and determine the impacts on city services. It is recommended that applications be submitted at least 60 days prior to the scheduled event. Late applications may be accepted, but the city cannot assure that late applications will be processed in time to issue the permit.

Use Additional Sheets if Necessary

Event Name: Newport Seafood & Wine Festival

Event Date: February 19, 20, 21, 22 2015 Time(s): Thurs 5-9, Fri 12-9, Sat 10-6, Sun 10-4

Location: 2320 OSU Drive Newport, Oregon 97365

Facilities to be used: Park XX

(Be specific) City Building: _____

Sidewalk: XX

Street: XX- Closing of the entrance to the Port & Rogue, re-opening the south entrance

Other City Property: XX

Private Property: Port of Newport Property

Set-up Dates and Start Times: February 6, 2015 set up starting at 8am.

Take-down Dates and End Times: March 4, 2015, completed by 6pm

Estimated Crowd Size: Participants (Including Vendors and Volunteers)
1,000

Spectators 15,000 to 20,000

Is this a New Event: No If not, Previous Dates/Years Held: 38th year

Applicant: The Greater Newport Chamber of Commerce

Mailing Address: 555 SW Coast Hwy Newport, Oregon 97365

Telephone: 541-265-8801

E-Mail: Lorna@newportchamber.org

Fax: 541-265-5589

Contact Person (must be authorized to sign for applicant): Lorna Davis

Contact Person Address, Phone(s), E-Mail: Same as above

Applicant Status (Non-Profit/For Profit): Non-Profit

DETAILED DESCRIPTION OF EVENT

Provide a detailed description of all activities associated with the event, including a detailed description of city services requested. In the description, state whether food, drink, and/or alcoholic beverages will be served. To the extent that the event involves use of parks, streets, or other city facilities, provide a description of how and when the facilities will be used and a diagram of the areas that the event will use. If applicable, provide a parking plan, security plan, medical assistance plan, litter control and disposal plan, and any other information that would be useful to the city. Use additional sheets as necessary to provide complete information.

This is an annual event held in South Beach on OSU drive adjacent to the Rogue Brewery on Port of Newport property. The Festival has approximately 150 vendors offering food and beverage, arts and crafts, wine and beer.

Water and power are provided on site. Litter control is contracted to a local service organization and overseen by the Chamber. Disposal is contracted between the Chamber and Thompson Sanitation. The tent is set up early in February and is dismantled after the event.

City services required are Police, Fire Department and Septic dumping. The City of Newport Police Department has reduced their fees to the Greater Newport Chamber of Commerce for services provided during this event, we are asking for the same consideration for this year's event. The Chamber of Commerce has utilized the disposal facilities at the wastewater treatment plant to dispose of the waste from the portable toilets at the Seafood & Wine Festival. In the past years the fee for this disposal has been waived. We are asking again to have the disposal fee waived for the 2015 Festival.

Security is provided by Newport City Police, TCB Events, and Lincoln County Sheriff. The security plan is determined and approved by Newport City Police Chief Mark Miranda.

Our medical assistance plan is determined and provided by the Newport Fire Department. The first aid station is staffed by Volunteer Fire department personnel and EMT's, the volunteer fire department utilizes booth space as an opportunity to raise funds for their operations.

We have coordinated the closure of the entrance to the Port/Rogue north of Ferry Slip road and the opening of the previous entrance for the event with the Port of Newport and the Rogue.

The Site location map is attached. Parking is staffed by GNCC SWF Committee and a local service organization. Parking is allowed in Rogue parking lot and the Oregon Coast Aquarium Southwest parking lot. Free shuttle service is provided throughout the festival by GNCC contracting with a local bus company.

This Packet Contains:

- **The City of Newport Special Events Application**
- **City of Newport Special Event Structure Agreement**
- **Port of Newport letter of support**
- **Site listing for signage**
- **Site location map to include parking locations**
- **2015 Control Plan**

**CITY OF NEWPORT
SPECIAL EVENT TEMPORARY STRUCTURE AGREEMENT**

Recitals:

WHEREAS, Applicant has applied for and received a special event permit and wishes to erect a temporary structure for the special event at the address set forth below; and

WHEREAS, Newport Municipal Code Section 9.80.020 provides that temporary structures may be erected in conjunction with a special event permit provided certain criteria are met, including an applicants' agreement to comply with such criteria.

Now Therefore:

By my signature below, I acknowledge that I have read this Agreement and I agree to comply with the conditions set forth below. I understand that failure to comply with this Agreement constitutes a violation of the Agreement, and the City may take any action it deems appropriate, including but not limited to the revocation of my special event permit and this Agreement:

- A. The structure will be erected no more than thirty (30) days prior to the date of the special event and must be removed within five (5) days after the event.
- B. The written permission of the property owner on which the structure is erected will be secured prior to any work commencing on the location.
- C. A City business license will be obtained prior to erection of the structure.
- D. I will be responsible for the maintenance of the grounds surrounding the structure and will provide trash receptacles for the duration of the temporary structure.
- E. Sanitary facilities will be available at the site through the duration of the event.
- F. The structure will not interfere with the provisions of parking for the permanent (regular) use of the site, or a traffic management plan will be provided in a form acceptable to the city.
- G. The structure will satisfy the vision clearance requirements of the Newport Zoning Code.
- H. Written approval for the temporary structure will be obtained from the Newport Building Official.

City of Newport
Special Event Temporary Structure Agreement



600 S.E. BAY BOULEVARD NEWPORT, OREGON 97385 PHONE (541) 265-7768 FAX (541) 265-4235 www.portofnewport.com

October 22, 2014

Lorna Davis, Director
Greater Newport Chamber of Commerce
555 SW Coast Highway
Newport OR 97365

Subject: 2015 Seafood & Wine Festival Permission

Dear Lorna,

This letter grants the Greater Newport Chamber of Commerce permission to use Port property at the Port of Newport Marina & RV Park in South Beach for the 2015 Seafood & Wine Festival. As in previous years, this will include property for placing the main activity tent and all ancillary tents and parking. Please provide us with a current site use plan. A current site area map is attached for your convenience.

It is our understanding that set up will begin on Thursday, January 30, 2015, and removal of the tent will start on Sunday, February 22, 2015 and be completed by Friday February 27, 2015.

We look forward to another successful event. And if you need anything further, please do not hesitate to contact me.

Sincerely,

Kevin Greenwood
General Manager

Attachment: Map

C: Chris Urbach, South Beach Marina Harbormaster
L:\SUP\Seafood & Wine Festival 2015

Serving the Maritime & Recreational Communities
Newport International Terminal (541) 265-9651 Newport Marina at South Beach (541) 867-3321

October 22, 2014

City of Newport
City Recorder
Peggy Hawker
169 SW Coast Hwy
Newport, OR 97365

Dear Peggy,

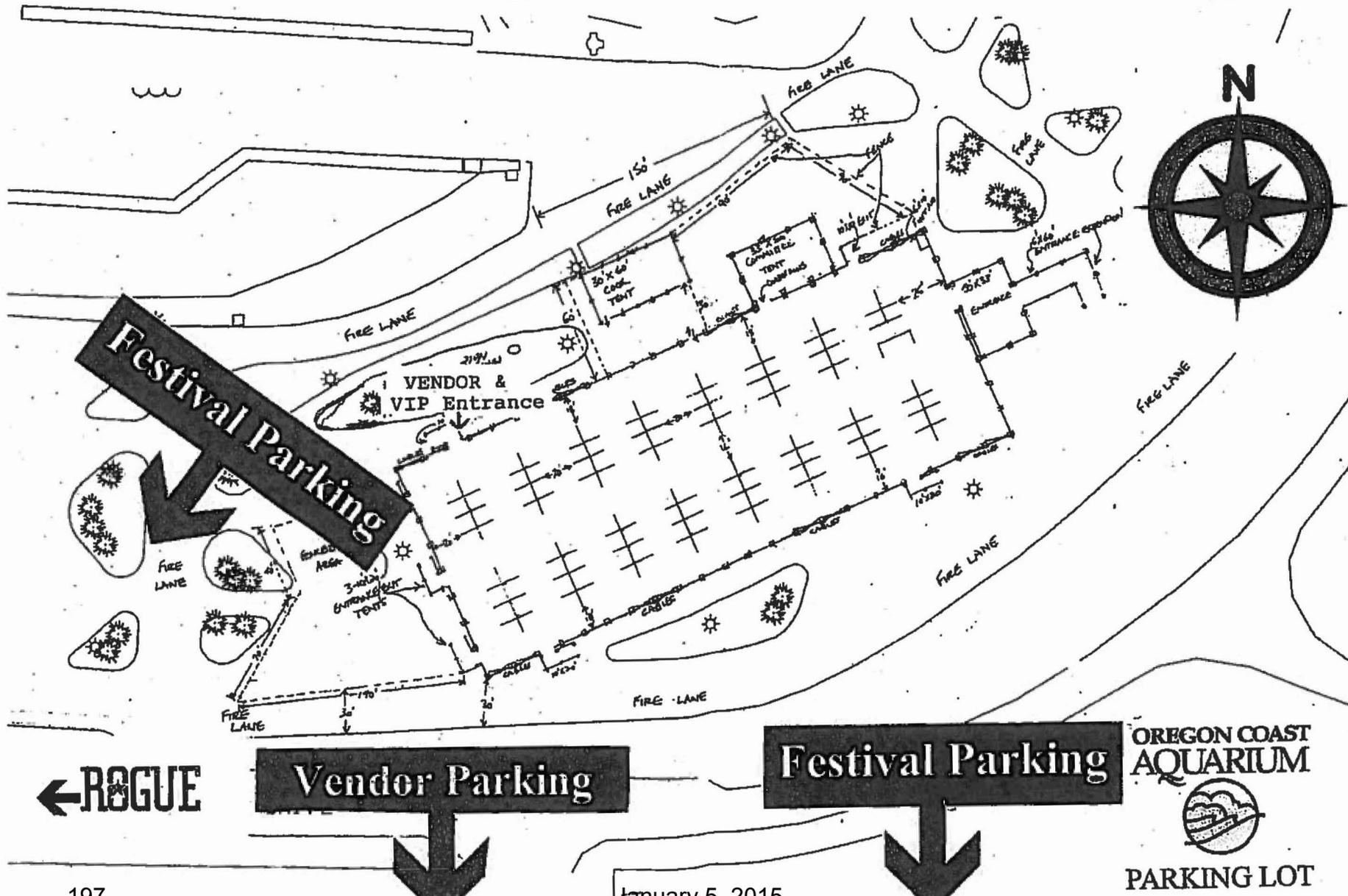
I am writing to ask for a permit to place signs for the Seafood and Wine Festival. The Festival occurs on February 19th thru the 22nd on the Port of Newport property adjacent to the Rogue Brewery in South Beach. It is our understanding that Non-Profit organizations receive a fee waiver for sign placement.

We plan to place signs at several locations. The signs will be placed from February 18th to February 22nd 2015.

Those locations are:

- Highway 101 North at approximately 31st street.
- Highway 20 at approximately NE Harney
- Highway 101 at Highway 20 (Bank of America corner)
- Highway 101 South at Beven's Market (app 960 SW Coast Hwy)
- Highway 101 South at the south end of the bridge prior to the turn onto OSU drive
- Highway 101 South at LaQuinta Inn (SE 32nd)
- Highway 101 South (app 50 feet north of Orca RV Park)
- Highway 101 South at right turn out, south end of the bridge
- OSU Drive near 2320 and SE Ferry slip road, several parking signs (app 10)
- Tyee Lodge 4925 NW Woody Way
- Best Western Plus Agate Beach 3019 N Coast Hwy
- Wal-Mart 160 NW 25th St
- America Inn & Suites 710 N Coast Hwy
- Rodeway Inn & Suites 206 North Coast Hwy
- Green Stone Inn 729 NW Coast St
- Oregon Coast Properties 415 NW Coast Street
- Hallmark Resort 744 SW Elizabeth Street
- Elizabeth Street Inn 232 SW Elizabeth
- Comfort Inn 531 SW Fall St
- Abbey Street Pier SW Bay Blvd
- Mariner Square SW Bay Blvd
- Marine Discovery Tours 345 SW Bay Blvd
- Embarcadero Resort 1000 SE Bay Blvd
- Newport Motor Inn 1311 N Coast Hwy
- Art Deco Public Parking on 9th & Hurbert
- South Beach State Park
- Don Davis Park West Olive Street
- Whaler Motel 155 SW Elizabeth Street
- Shilo Oceanfront Resort 536 SW Elizabeth Street

Newport Seafood & Wine Festival



NEWPORT

Seafood & Wine Festival

The Original And Still The Best

2015 Seafood & Wine Festival
Master Control Plan & Security Information

February 19th - February 22nd 2015

Thursday 5:00pm-9:00pm

Friday 12:00pm to 9:00pm

Saturday 10:00am-6:00pm

Sunday 10:00am-4:00pm

ENTRY AND EXIT TO THE FESTIVAL

- o All patrons and vendors must be 21 years of age or older to attend festival. All patrons appearing under the age of 30 will have ID checked and or scanned upon entry.
 - o Door 1 & 12 are the initial entrance for E-ticket patrons.
 - o Door 2 is an exit only/ vendor loading and unloading area.
 - o Door 3 is an exit only/vendor loading and unloading area.
 - o Door 4 is a vendors, Sponsor & volunteer check-in entrance and patrons exit. Volunteers and Vendors entering at the start of their shift will need to present valid ID to staff at door. Staff at door will confirm volunteer name and shift prior to allowing admittance into festival tent. This will be used as re-entrance for patrons. ID's must be checked at this entrance.
 - o Doors 5 & 6 are a passage way to the restrooms and smoking area. Patrons may drink in this area. No open glass bottles in this area. This area is fenced off. Possibility of fence jumpers in this location so security will have personnel stationed to enforce restricted area.
 - o Door 7 is for group tours, water taxi groups, patron re-entry, vendor loading and unloading and exit.
 - o Door 8 is a passage way to the cook tent, garbage, vendor bathrooms, committee tent, and bank. No patrons will exit here, this area is fenced in.
 - o Door 9 is a passage way to the cleanup crew's station. No patrons will exit here, this area is fenced in.
 - o Door 10 is a patron exit only with vendor loading and unloading.
 - o Door 11 is the initial entrance for General Admission ticket, Saturday e-ticket holders and re-entrance for all patrons. NO vehicles parking around this door.
 - o First aid station is located at booth number 55 & 88 (Newport Volunteer Fire-EMT)
 - o E-Ticket holders will have an express line located at door 1 & 12. E-Ticket holders will be subject to the same bag search and ID checks as non E-ticket holders.
 - o All Patrons that re-enter are subject to a bag check.
 - o Doors 4, 7, and 11 are re-entrance doors to all patrons that have been in the Festival that day unless at capacity, they must have the proper day stamped on their hand, or wrist band to indicate entrance.

SAFETY RULES

- o All bags may be searched upon entering the festival.
- o Prohibited items: knives, guns, corkscrews, replica weapons, and other items deemed hazardous or illegal.

- No pets allowed. (Service animals permitted)
- Smoking is only permitted in designated safety area/common area, and is near the port-a-potties.
- When patrons leave the festival, they must have no alcohol in their glass. They can either drink it or dump it out.
- Please make note of all fire lanes and parking areas. If a car needs to be moved please call dispatch and give plate number, color, make, and location.
- **FIRE LANES AROUND THE TENT ARE TOW AWAY ZONES.**
- **No parking around the Festival 1 hour prior to opening or closing the Festival each day.**
- Open wine bottles at the Festival are prohibited.
- Vendor parking near the tent is off limits 1 hour prior to the Festival and during Festival hours.
- No unattended vehicles in the unloading/loading zone (excluding set up and tear down).
- Vendor parking plaque must be displayed visibly in the vehicle.
- **No Parking or stopping within 10 feet of the Festival tent,** with exception to commercial transportation.
- In the event there are petitioners, they shall be stationed at the West end of the Festival tent in the Rogue Parking lot.

VENDOR INFORMATION

- Vendors must wear their wristbands during their shift hours.
- Vendors cannot consume alcohol during the hours of their work shift. No exceptions.
- If a vendor needs assistance in their booth, they will raise their flag to notify staff personnel who will take appropriate action and notify officials as needed.
- OLCC will not allow glasses or containers over 24-ounce size. A four (4) ounce pour is considered a glass of wine and a one (1) ounce pour is considered a "taste." Wine serving sizes are limited to 4 oz. Beer serving sizes are limited to 12 oz.
- Alcohol purchase is limited to two (2) servings per person per sale.
- All alcohol sold by the bottle must remain sealed. **NO EXCEPTIONS.**
- **The last call for poured alcohol sales 30 minutes prior to closing and last call for all sales is 15 minutes prior to closing.** An announcement must be made prior to notify vendors of time to stop pours and sales.
- **All servers are required to have a OLCC service permit** or volunteer service brochure with them and accessible at all times
- Alcohol consumption container (glass) color will be clear.
- **FIRE LANES AROUND THE TENT ARE TOW AWAY ZONES.**
- **No parking around the Festival 1 hour prior to opening or 1 hour closing Festival each day.**

PATRON INFORMATION

- Free Shuttle buses run on a constant route during Festival hours with service extending one hour after close of Festival. Patrons can catch the shuttles outside of the tents near the main entrance.
- If a patron leaves the festival and wants to return, they must enter at the main entrance, Door 11, Door 7 or Door 4, unless at capacity. All re-entries are subject to an ID check and Bag Check.
- Patrons may sit in Rest Area located in the North West corner of the tent. Maximum of 49 patrons in the Rest Area at a time.
- No outside food or drink is allowed in the Festival.
- **SATURDAY- No General Admission, E-TICKETS ONLY.** We will have ability to take general admission if the numbers can allow for extra entries.

**CUTTING OFF A VISIBLY INTOXICATED OR UNRULY PATRON (VIP)
VIP'S SHALL NOT BE SERVED**

- o ***Anyone who is an unruly patron, or denied service has to leave the Festival site. Subjects refusing to leave or attempting to re-gain entry are subject to arrest.***
- o Once outside, security will direct patron to free shuttle service area.
- o When a patron is identified as a possible VIP or unruly, security will first remove them from their friends before questioning and determining their status. Then the VIP may be escorted out of the tent by security and their information given to the dispatch officer. In addition, security will inform dispatch as to patron's denial or acceptance of free shuttle.
- o Provide dispatch with name, DOB, ID #, physical description and time cut off.
- o Patrons who accidentally break their glass need to be warned. Patrons who deliberately break a glass will be removed. If they are unruly or over intoxicated, please call for security to remove them from the event.
- o If security detains a patron and need police assistance, contact dispatch and if possible, escort the suspect outside the closest exit and wait for police to arrive.

HANDLING A POLICE, FIRE, MEDICAL SITUATION

- o If you need to have Police, Fire or Medical assistance, please contact the dispatch center immediately.
- o If you have a minor medical problem that is mobile, the first aid area is located at booth 55 & 88 (Newport Volunteer Fire-EMT). If you have a non-mobile medical emergency, contact dispatch and provide the location. Keep an area clear around the victim so medical personnel can respond.

ADDITIONAL INFORMATION

- o Alcohol monitors are non-confrontational. Their job is to look for intoxicated and unruly patrons. They are to inform dispatch of persons who are to be removed, not to handle the physical removal.
- o If assistance is needed from OLCC, the Dispatcher will be contacted.
- o Any and all changes of the Control Plan must be approved by Chief Miranda.

Wrist Band Colors

| | |
|--------------------------------------|---------------------------|
| Vendors – Green | (4 Day Pass) |
| Sponsors – Red | (3 Day Pass) |
| Volunteers – Orange | (3 Day Pass) |
| VIP Thursday- Purple | (Thursday only) |
| Non-Profit pouring volunteers- White | (3 Day Pass- NO SATURDAY) |

Non-Profit vendors will receive white 4 day wrist bands; they are good for Thursday, Friday and Sunday. **They must have a Saturday stamp on the white wristband to use them for Saturday entrance.**

Key Contacts

DISPATCH

Mike Goff, Owner TCB Productions & Security: Cellular: 961-0831
WVCC Dispatch Center - Police – Fire – Medical: 265-4231
Fire: Robert Murphy, 541.961.1523
Mark Miranda, Newport Police Chief: 574-3348 (work) 270-1055 (cell)
Jason Malloy: 541.961.8269 Todd Sarazin, 541.961.8058
TCB Dispatch: 574-2828
Port of Newport Office: 265-7758 Chris Cell: 541.270.5558
Lyle Mattson, Posse: 541.961.5373

Tobacco Enforcement Officer – Amy Ward 272-7243 (cell)
OLCC Inspector –541-265-4522

Festival Contacts

Chamber Director: Lorna Davis 270-1810 (mobile) 336-1429 (home)
SWF Chair – Doug Orr: 270-4556
Seafood & Wine Festival Coordinator- Bobbi Price- 541.270.1995

Vendor Signature: _____ Date: _____

Police Chief Approval: _____ Date: _____

Peggy Hawker

From: Robert Murphy
Sent: Monday, November 03, 2014 1:50 PM
To: Cindy Breves
Subject: RE: Special Event Permit

Cindy, Here is the Fire Dept. Costs for this event:

2014 Costs

Total Supervisor Costs=\$795

Total Crew Costs=\$1,111

2015 Cost (estimated)

Total Supervisor Costs=\$834 (estimated 5% increase from 2014)

Total Crew Costs=\$1,167 (estimated 5% increase from 2014)

Fire Dept. total cost=\$2,001.

Rob Murphy

Interim Fire Chief
Newport Fire Department
245 NW 10th St.
Newport, OR 97365
541-265-9461
r.murphy@newportoregon.gov

From: Cindy Breves
Sent: Monday, November 03, 2014 12:22 PM
To: Department Heads
Subject: Special Event Permit

Attached is a Special Event Application for Seafood and Wine. Please review and get back with to me if there will be any fiscal impact on your department.

Cindy Breves

Executive Assistant/ Court Clerk
169 SW Coast Highway
Newport, OR. 97365
541-574-0603
c.breves@newportoregon.gov

Peggy Hawker

From: Mark Miranda
Sent: Tuesday, November 18, 2014 4:29 PM
To: Cindy Breves
Subject: Seafood and Wine Permit

I estimate that the cost for police services will be not more than \$10,000.

Chief Mark J. Miranda

Newport Police Department

Noble Professional Dedicated

** Integrity ** Excellence ** Community ** Employees ** Teamwork ** Commitment **

Newport, Oregon USA

(FBINA 198)



CITY MANAGER'S REPORT AND RECOMMENDATIONS

Agenda #: IX.B
Meeting Date: January 5, 2015

Agenda Item:

AUTHORIZATION OF A GOODS AND SERVICES AGREEMENT WITH THE AUTOMATION GROUP TO PROVIDE SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) INTGTEGRATION SERVICES FOR THE NEW LAKEWOOD HILLS WATER PUMP STATION AND THE SE 40TH STREET WATER PUMP STATION

Background:

In this past fiscal year, the City implemented the first project of the SCADA System Master Plan that was developed by Civil West Engineering in February 2012. A SCADA System (Supervisory Control and Data Acquisition) creates a centralized system to monitor and control various stations and processes within a City's water distribution system. In order to proceed with the next step to implementing the study, Public Works Director, Tim Gross, is recommending that we proceed with the new Lakewood Hills water pump station, as well as the pump station located at SE 40th Street in South Beach. Both of these stations have fiber optic connectivity and proceeding to include them in the SCADA System will allow for more centralized monitoring and control of these facilities.

Recommended Action:

I recommend the City Council consider the following motion:

I move to authorize the City Manager to execute the agreements with Automation Group for SCADA Integration Services for the Lakewood Hills Water Pump Station in the amount of \$24,880 and for the SE 40th Street Water Pump Station in the amount of \$24,770.

Fiscal Effect:

Ninety-four thousand dollars (\$94,000) was appropriated in funding in the current year budget. This amount covers the cost of this contract, plus the cost of fiber extension by CoastCom in the amount of \$33,214 to reach these two stations.

Alternatives:

None Recommended

Respectfully Submitted,

Spencer R. Nebel
City Manager



Agenda Item # IX.B.
Meeting Date January 15, 2015

CITY COUNCIL AGENDA ITEM SUMMARY
City Of Newport, Oregon

Issue/Agenda Title: Approval of scope of work with The Automation Group (TAG) for SCADA integration at the Lakewood Hills and SE 40th Street Pump Stations

Prepared By: TEG Dept Head Approval: TEG City Manager Approval:

Issue Before the Council:

Approval of scope of work with The Automation Group (TAG) for SCADA integration at the Lakewood Hills and SE 40th Street Pump Stations

Staff Recommendation:

Approve the task orders

Proposed Motion:

I move to authorize the City Manager to approve the scope of work and execute a goods and services agreement with The Automation Group (TAG) to provide SCADA integration services for the Lakewood Hills Water Pump Station in the amount of \$24,880 and for the SE 40th Street Water Pump Station in the amount of \$24,770.

Key Facts and Information Summary:

In FY13-14 the City implement the first project of the SCADA System Master Plan that was completed by Civil West Engineering in February of 2012. This plan identified the necessary equipment and costs to develop a SCADA system to monitor and control the water distribution system for the City. This first project involved the automation of valves feeding the South Beach area, and the development of the SCADA software interface which operates on a computer in the Water Distribution Supervisors office.

In the fall of 2014 the new Lakewood Hills water pump station was put into service. The construction of this station intentionally did not include SCADA integration, because Public Works wanted to bid the work separately to ensure the integration was configured and programmed to be consistent with the existing SCADA system. Fiber optics communication lines have been extended to this station already in preparation for its integration into the SCADA system.

The water pump station on SE 40th Street in South Beach, constructed with the Community College, was the station upon which the Lakewood Hills pump station design was modeled. This station also not integrated into the SCADA system, however fiber has been extended to this location.

In FY14-15 \$94,000 was appropriated in the approved budget for SCADA implementation. Attached are two quotes from TAG to provide SCADA integration services for the Lakewood Hills Water Pump Station in the amount of \$24,880 and for the SE 40th Street water pump station in the amount of \$24,770. TAG is the vendor that developed the SCADA software interface that the City is using for the distribution system, and provides SCADA support for both the Water Treatment and Wastewater Treatment Facilities.

Other Alternatives Considered:

None. City staff feels that TAG can provide the best SCADA integration of any vendor and the pricing is consistent with the estimated costs identified in the SCADA System Master Plan of \$23,594 per station.

City Council Goals:

N/A

Attachment List:

- Quote No. Q141117G from TAG for the SE 40th Street Pump Station
- Quote No. Q141116G from TAG for the Lakewood Hills Street Pump Station

Fiscal Notes:

\$94,000 was appropriated in the FY14-15 budget for the 2014 Water SCADA system Implementation Project (2014-011). \$33,214 was paid to Coastcom on fiber optic extensions to reach these pump stations. Total contract value of these task order with TAG to complete the work is \$49,650. Total cost summary is as follows:

| | |
|-----------------------------|-----------------|
| CoastCom (Fiber extension): | \$33,214 |
| TAG (SCADA): | <u>\$49,650</u> |
| Total project cost: | \$82,864 |
| | |
| Project Funding: | \$94,000 |



Quote

Q141116G
Nov. 16, 2014

Olaf Sweetman
City of Newport

RE: Lakewood Pump Station SCADA System

Project Scope:

TAG is quoting a new SCADA system for this pump station that will allow Lanny to view the Pump Station operation and alarms from the Existing SCADA Server Located in his office. Details of the system are listed below.

- Provide and install a TAG RTU with the following
 - CLX Brick Processor to match the existing ones used on prior Projects
 - Power Supply
 - Interface Terminals
 - Provide SCADA Signals for the following (Loop Isolators and IP Relays will be used where required)
 - Pumps 1-4 Running
 - Pumps 1-4 Fault
 - System Fault
 - Up/Down Stream psi
- Provide and Install Power to RTU from Existing UPS
- Provide and install an Ethernet cable from the City Provided Ethernet Switch
- Provide and install conduit and wire to the Generator and Transfer switch to monitor the following.
 - Generator in Auto
 - Generator Running
 - Generator Alarm
 - Transfer Switch on Normal Power
 - Transfer Switch on Emergency Power

Notes:

- City to Provide Fiber and Ethernet Cabinet/Switch installed

Price..... \$24,880.00

Thank you,

Gary Jenks
 Gary Jenks
 Office: 541-359-3755
 Cell: 541-912-3766
 Fax: 541-982-2266
 gjenks@tag-inc.us

The Automation Group, Inc – www.tag-inc.us
 CCB #172838
 Phone: 541/359-3755
 Certification: State of Oregon Tier-2 Emerging Small Business Cert# 6023



Quote

Q141117G
Nov. 17, 2014

Olaf Sweetman
City of Newport

RE: SE 40th St. Pump Station SCADA System

Project Scope:

TAG is quoting a new SCADA system for this pump station that will allow Lanny to view the Pump Station operation and alarms from the Existing SCADA Server Located in his office. Details of the system are listed below.

- Provide and install a TAG RTU with the following
 - CLX Brick Processor to match the existing ones used on prior Projects
 - Power Supply
 - Interface Terminals
 - Provide SCADA Signals for the following (Loop Isolators and IP Relays will be used where required)
 - Pumps 1-4 Running
 - Pumps 1-4 Fault
 - System Fault
 - Up/Down Stream psi
 - Flow (Does not work now but will leave provisions for it)
- Provide and Install Power to RTU from Existing UPS
- Provide and install an Ethernet cable from the City Provided Ethernet Switch
- Provide and install conduit and wire to the Generator and Transfer switch to monitor the following.
 - Generator in Auto
 - Generator Running
 - Generator Alarm
 - Transfer Switch on Normal Power
 - Transfer Switch on Emergency Power
- Time is included for Generator Manufacturer assistance with Contacts

Notes:

- City to Provide Fiber and Ethernet Cabinet/Switch installed
- City to provide underground raceway to Generator (TAG to connect on both ends)

Price..... \$24,770.00

Thank you,

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