



AGENDA & NOTICE OF PLANNING COMMISSION MEETING

The Planning Commission of the City of Newport will hold a meeting at **7:00 p.m., Monday, January 23, 2012**, at the Newport City Hall, Council Chambers, 169 SW Coast Hwy., Newport, OR 97365. A copy of the meeting 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, 541-574-0613.

The City of Newport Planning Commission 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.

NEWPORT PLANNING COMMISSION Monday, January 23, 2012, 7:00 p.m.

AGENDA

- A. Roll Call.**
- B. Approval of Minutes.**
 - 1. Approval of the Planning Commission work session and regular meeting minutes of January 9, 2012.
- C. Citizens/Public Comment.**
 - 1. A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.
- D. Consent Calendar.**
 - 1. Final Order for File No. 2-ADJ-11. Approval of a request submitted by Fred Meyer Stores, Inc. for an adjustment to Section 2-3-6.015 (Number of Parking Spaces Required). The Commission held a public hearing on this matter on January 9, 2012.
- E. Public Hearings.**
 - Legislative Actions:
 - 1. File No. 5-Z-11. Amendments to the Newport Municipal Code and Newport Zoning Ordinance that put in place a program for managing the City's urban tree canopy. If adopted, the amendments will support a City application for a "Tree City USA" designation with the Arbor Day Foundation. The Planning Commission will forward a recommendation on this matter to the City Council.
- F. Unfinished Business.**
- G. New Business.**
- H. Director Comments.**
- I. Adjournment.**

Draft MINUTES
City of Newport
Planning Commission Work Session
City Hall Conference Room "A"
Monday, January 9, 2012

Planning Commissioners Present: Jim Patrick, Glen Small, Gary East, Melanie Sarazin, Jim McIntyre, and Mark Fisher, and Rod Croteau (arrived at 6:20 p.m.)

Citizens Advisory Committee Members Present: Lisa Mulcahy and Bill Branigan.

Citizens Advisory Committee Members Absent: Dustin Capri (excused).

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

Chair Patrick called the Planning Commission work session to order at 6:00 p.m. and turned the meeting over to CDD Tokos.

A. New Business.

1. Discuss proposed Sign Code amendments. Tokos noted that included in the packet was an application received from Thomas Fox Properties, property owners of the Walgreens site. Walgreens would like to have an LED message board on their sign. They hired a land use attorney to put together a code for that. Tokos explained that Newport code allows applicants to apply for text amendments. Tokos told the applicant that he would have feedback for them from the Commission. Their proposal is limited to the C-3 zone. Their proposed code contains standards in the amount of surface area for this type of signage and how frequently it can turn over images. Tokos said this is a different type of signage and is not currently permitted in the sign code. He wanted to give the Commissioners a chance to read this proposal in order for him to know what types of information they would like to see when this comes to hearing, which will be no sooner than February 13th. They are approaching this as a land use. A sign code is typically either a land use or not. We have to provide DLCD with 35-day advance notice for legislative items. That is why the hearing won't be until the first meeting in February. In his memo, Tokos put a few things for the Commissioners to think about; whether they want to see sample codes, what these signs actually look like in reality with images or video, any literature available with respect to safety or distractions, or what the legal limitations are for changes to sign codes (which is basically that whatever the City adopts has to be content neutral; specifying size and place is fine). McIntyre said that there are some places that have flashing signs, and as a driver he finds then distracting; especially if they are bright. He said he is unsure about this particular location on the corner of this intersection in town with lots of traffic. He doesn't know if that is good. Sarazin wondered if ODOT had objections to the sign, and Tokos said they can't if it's outside the right-of-way. Small said it might be good to have an illustration or video of what this sign really is. Sarazin explained that at other Walgreens it is a red reader board. East said that if it could only change every five minutes, it would be more like a solid reader board. Patrick said we need to write what this covers for all electronic signs. He said there are several scrolling LED signs. Fisher said a lot of those are inside buildings attached to the window, and he is unsure how that is controlled. Patrick said we don't regulate inside buildings. Fisher said whatever we come up with; we will be setting precedence for everybody else. Small wondered if time and temperature signs are the same. Tokos said that he understands those used to be permitted in the sign code; but under the latest amendments, that was taken out. Patrick said that down I-5 there are several fully electronic signs. He said he would like to see any data the applicant might have. He said this ordinance is written for their sign, and we need to take it and work it to match up with more than one LED sign. Small wondered if it's common approach to have their attorney write this. Tokos said that not all jurisdictions allow applicants to submit text amendments, but Newport does. Patrick said we just went through the codes to get away from writing them narrowly for one use. Tokos said he thinks the Commission wants to look at this very carefully. If the Commission thinks electronic signs are justified, what is the rationale for just in the C-3 district? Branigan wondered if we shouldn't define what an electronic sign is. Fisher wondered if it is Victor that implements the sign ordinance, and maybe it would be good to hear from him what he has run into day to day. Patrick added that hearing what Victor thinks is enforceable would also be good. Tokos said that the Commission is not bound by this application, you can change it. This is just a proposal and opens the door. McIntyre noted that he wants to make sure that Exhibit 'A' says it won't be flashing. Tokos said it notes that no sign shall flash or scroll or be animated, so it covers that. McIntyre said at first he thought it said they could do all that. Fisher asked about the Cubs sign, and Tokos said he understands that came in when government signs were not clearly regulated in the code so it's grandfathered in. Tokos said he could probably do a video for the Commission. He said Newberg has a fair number of these signs. He wants to catch it in a community where signage was installed under a code. Albany and Sherwood were also suggested. Tokos said he would include Walgreens. Sarazin said that in thinking how the sign looks, she pictures the Walgreens in Albany. East asked if Lincoln City Walgreens has a similar sign, and that was confirmed. McIntyre said that it's his experience that if a city permits a monument or pylon sign, chain stores will have lighted signs as part of their sign requirements unless it's totally not permitted by the city. He said that when he worked for Von's, they always required electronic signs. Tokos said that is what

Walgreens wants, but not all jurisdictions allow it. Sarazin said that doesn't mean it has to look like the typical Walgreens here in Newport. She talked about McDonalds in Sisters, Oregon not looking typical. Tokos said that he has encouraged them to work with Walgreens to reduce the height of the sign; it's 20 feet now. Fisher said that he would hate to see Newport look like when you are dropping down into Reno, Nevada. He said that if we let one do this, we have to let them all. East agreed it will open it up to Fred Meyer and Wal-Mart to do it with their expansions. Tokos said that except they are not in the C-3 zones. He was asked where C-3 zones are, and he explained that most is on Highway 20 and at this corner. There are some pockets on 101, but most commercial along 101 is C-1. Tokos asked if the Commission wanted the applicant to explain why this should be just in C-3, and the consensus was that most didn't care about that. Small said that when working through this, this is obviously not the end of sign technology; it could address not only what we would allow but also what we could imagine. He said that he is not opposed to images that change; just not a flashing light. McIntyre said he would like to see sample codes from other jurisdictions. Patrick said that he could see the Chamber and the PAC needing this type of sign. He thinks we will want input from the public. Tokos said that Walgreens doesn't have to put in LED, they can adjust it. Tokos said that one thing you will see in the 20/20 document is that there are concerns about the 101 corridor as it is now. Tokos said that if the Commission thinks that it's good to allow LED message boards, we may be able to use it to reduce sign heights so that they are not so high in the air. In his opinion, sign heights would have more impact on vision. He said it seems to him that if a driver looks up, it's more distracting than just looking the same direction they're supposed to be looking. Patrick asked if Tokos thought something like 15 feet, and Tokos said something like that; it's 30 feet now in the city code. Tokos noted that Walgreens has done a fantastic job of landscaping that corner, and a 20-foot sign almost takes that all out. McIntyre said that you would be talking about a 4.5 foot by 6 foot concrete base. Patrick said he likes the idea about trading height for electronic signs. Croteau said that he assumes this sign is the height it is because they are leaving room for another tenant. Tokos confirmed that the Commissioners want to see sample codes, but asked if they wanted to see some codes in practice through pictures or videos. Patrick said he would like to see pictures from some of the places to see what they ended up with. Tokos said that he will try to get video. He added that five minutes probably isn't that bad. A driver probably isn't going to see it turn over as they drive. Tokos said he will pass this on to the applicant so that they can pull together some examples as well. They may also know if there is literature on safety issues. Tokos asked the Commissioners if they wanted to see this information in a work session or at the hearing. Fisher preferred seeing it in work session. Patrick didn't think it would be done in one hearing either. Tokos will get the information for the next January meeting.

B. Adjournment. Having no further items for discussion, the work session meeting adjourned at 6:30 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

Draft Minutes
City of Newport Planning Commission Regular Session
Monday, January 9, 2012

Commissioners Present: Jim Patrick, Jim McIntyre, Gary East, Melanie Sarazin, Glen Small, Rod Croteau, and Mark Fisher.

City Staff Present: Community Development Director (CDD) 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 7:00 p.m. On roll call, McIntyre, Small, Croteau, Patrick, Fisher, East, and Sarazin were present.

B. Approval of Minutes.

1. Approval of the Planning Commission work session and regular session meeting minutes of November 14, 2011, and the work session minutes of November 28, 2011.

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

C. Citizen/Public Comment. No comments regarding non-agenda items.

D. Consent Calendar. Nothing on the consent calendar.

E. New Business.

1. Reappointment of Commission members. Tokos noted that at their last meeting, the City Council reappointed three Planning Commissioners, Jim McIntyre, Rod Croteau, and Mark Fisher.

2. Election of Planning Commission Chair and Vice Chair for 2012. **MOTION** was made by Commissioner Fisher, seconded by Commissioner Sarazin, to continue this year with Jim Patrick as Chair and Glen Small as Vice Chair. The motion carried unanimously in a voice vote.

3. Discuss a March date for a joint meeting with the Newport City Council. Tokos noted that the City Council has expressed an interest in meeting with the Planning Commission in March, and he wanted the Commissioners thoughts for a date. The consensus was to hold the joint meeting on the regularly-scheduled Monday, March 12th; and Tokos will take that back to the Council.

F. Public Hearings. Patrick opened the public hearing portion of the meeting at 7:03 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, bias, ex parte contact, or site visits. Sarazin declared a site visit to Fred Meyer and disclosed that recently one of the interested parties in the vacation rental ordinance contacted the firm she works for; and they are doing work on his behalf, which is being entered into the record tonight. The rest of the Commissioners declared site visits to Fred Meyer. Patrick called for objections to any of the Planning Commissioners or the Commission as a whole hearing these matters; and no objections were raised.

Quasi-Judicial Hearings.

1. File No. 2-ADJ-11. A request submitted by Fred Meyer Stores, Inc. (Brian Peters of Mulvanny G2 Architecture, authorized representative), for an adjustment to NZO Section 2-3-6.015 (Number of Parking Spaces Required). The applicant is seeking an adjustment because they intend to do interior remodeling that will result in an increase of retail floor space and thereby require additional parking spaces; and the store is not able to provide the required number of spaces.

Patrick opened the hearing for File No. 2-ADJ-11 at 7:05 p.m. by reading the summary of the file from the agenda. He called for the staff report. Tokos noted that this is an application for adjustment to the City's parking standards that apply to this property located at 150 NE 20th Street. Fred Meyer is proposing a little over 15,000 square feet of second floor addition within the existing footprint of 158,000 square feet. This would require 528 parking spaces, and they are providing 408; which is a little over 20% reduction below the minimum. The City's code provides for adjustments to numerical standards. The applicant has the burden of showing they are mitigating impacts to the extent practical, that the adjustment is equally meeting the objectives of the code, and that the adjustment is not impacting utilities or fire access. When the Commission considers the adjustment, they look at the cumulative effect if adjustments to more than one standard are being requested. In this case there is only the one. Tokos noted that the staff report outlines the criteria and shows steps that Fred Meyer has taken to offset the adjustment. He said

that what they have offered is a pretty good package to help improve the safety for pedestrians and vehicles in that lot. He added that the purpose of parking lots is to provide safe access to the business. Tokos said that focusing on those aspects; Fred Meyer has gotten to the core issue here. The site plan included in the packet shows there will be a raised sidewalk from NW 20th to the main entrance of the store, which provides safer pedestrian access. They propose moving the transit stop from the front of the store to a dedicated location south of the bottle return and constructing a bus shelter there. Tokos noted that the Commissioners have an email from Cynda Bruce with Lincoln County Transit basically saying that they are on board with this arrangement. There will be new stop bars at the angled stops next to the bottle return, which should make that area a little safer. They are proposing to add 18 additional bicycle spots to better accommodate that form of transportation and adding, he believes, five employee parking spaces to the rear of the building. Tokos said it seems reasonable for the Planning Commission to find that these changes mitigate the impact such that they are achieving the objective of the code. Tokos said the one area the city had encouraged the applicant to look at was that angled intersection; and the use of stop bars is a reasonable approach. It may require more than that if it proves to be ineffective. Tokos said it is a tough site. McIntyre asked if there is rear access permitted for employees to the store, and Tokos said he would let the applicant speak to that. Fisher noted that he was surprised that there were no comments from the Sea Towne Center. He said that several times a day he goes by there and frequently the Fred Meyer parking lot is very full; so he assumes if there are fewer parking spaces, there will be a fall over into the Sea Towne Center. That is why he is surprised there is no comment here. Croteau asked that with an amendment of this type if it is appropriate to add a landscaping requirement. Tokos noted that there is a standard for 10%. They already meet the landscaping requirement. It's not something related to the criteria, so it's not something we can add.

Proponents: Chris Ferko of Barhausen Consulting Engineers came forward to testify. Ferko said they are the civil engineer consultants for Fred Meyer and have worked with them for over ten years. He noted that with him tonight was Tom Gibbons with Fred Meyer Real Estate. Ferko first addressed the question about employee access behind the store. He noted that there are two employee entrances near where they are putting the parking stalls. McIntyre asked if those are secured accesses. Having been in a similar retail industry, McIntyre noted that they never allowed their employees to go out the back because that is where the majority of shrink would occur. Gibbons explained that there are specific doors that all employees have to use to come and go that are specifically set up to watch that shrink; and these are those rear doors. Ferko continued that staff had done a really good job with the staff report. There were just a couple of things that he wanted to speak to further. He noted that the remodel is fully within the walls of the store. There will be a 15,400 square-foot mezzanine of additional retail area added. Also, before the meeting, Ferko had distributed a colored exhibit showing what the exterior of the building will look like. It will be in earth colors. He said they are excited to be upgrading the store and improving the shopping experience. Ferko explained that in regards to the proposal, as of today they are 14% below what the code requires. With this 15,000 square-foot addition, that increases that up by 8%. He said that they are not asking for the full 22%; it is more like an 8% change. He said they are adding a couple of stalls over all. Having been to the site, he said that the pedestrian access is definitely something that is needed because there is not really a safe means for the interplay of pedestrians from the streets. He said that will have value. He noted that the bicycle parking will add an alternative mode of transportation rather than driving a car. Also, someone can take the bus somewhere when they park their bicycle there. He said that it will be good to have those stalls for bicycles. He added that moving the transit stop and adding a shelter makes sense instead of being right in front of the store where it's the busiest. He noted that adding some employee parking behind will offset the increase in square footage and provide additional parking on site. Ferko said that the internal intersection with the diagonal and square approaches is confusing. They will add stop controls; otherwise it is still free-flowing. He said that by adding stop control, everybody has to stop like at a 4-way intersection. It makes everybody slow down, watch, and make sure they are doing it right. It will make that intersection safer than it is now. Ferko summed up by asking the Commission for their approval tonight. Small asked Ferko if they had any studies of what impact this 15,000 square-foot addition of retail space will have on the increase in the number of shoppers it will bring. Gibbons said that they don't believe there will be an incremental increase in number of shoppers. He said the store is in dire need of a remodel. He said the aisles upstairs are so close together. The added square footage is basically more for marketing. They will get new gondolas and people will be able to navigate the aisles. He said that is what they are after. McIntyre asked if their intent was to put non-grocery items upstairs and leave the main floor for mostly groceries. Gibbons confirmed that saying that groceries require carts, and getting carts upstairs is challenging. Food will be on the ground floor and also items that need carts, so some of the non-grocery stock will use part of the ground floor as well. It will provide a more logical pattern. McIntyre wondered if the mezzanine would expand more to the front of the store. Gibbons said he wasn't sure what portion is being expanded, but obviously they will be trying to keep it from coming out to the center of the store because of light. He noted that with the new gondolas you can look down at the store itself. He said that the store in Redmond, Washington shows how impressive it really looks. He said the store will look completely different when it's finished. Small said that he was interested on the impact the expansion has on the need for parking, but asked for confirmation that they don't anticipate any more shoppers per hour or per week as a result of this expansion; and Gibbons said that is correct. Gibbons added that Fred Meyer is more sensitive to parking than others. They wouldn't be doing it if it created a negative impact because shoppers would stop shopping them.

Bill Branigan, Planning Commission Ad Hoc Committee Member, asked a question from the audience. He wondered if, as part of the remodel, Fred Meyer will be doing something with the bottle return area because he thinks where it is presently located adds to the confusion to customers going in. Gibbons explained that it will remain roughly in that location.

There were no other proponents present wishing to testify.

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

Patrick closed the public hearing at 7:25 p.m. for Commission deliberation. Sarazin said that speaking from her experience of shopping at Fred Meyer she doesn't feel that parking as it is now is a problem. She thinks the traffic patterns in the congested areas are the problem; and hopefully the stop bars will be helpful for that. She noted that she has never been unable to find parking and thinks it is ample. She thinks Fred Meyer has tried to mitigate and lessen the impact. Sarazin believes the expansion is more for the convenience of shoppers than to bring in more shoppers. East agreed. He doesn't think the remodel will necessarily increase customer flow by much. He said that he shops there and has never had a problem with parking. Fisher said that parking is the question. He noted that where they are going to put the facility for the transit bus has always been his fall-back place when the rest of the lot is full. Croteau said he appreciates that they have made a real effort to justify this adjustment. He added that he would appreciate it if they would try to improve the curb appeal by improving the landscaping along 101 and along NE 20th because he believes that as it is now is poorly done. Small said that in looking at the proposal he was concerned right off that at present they didn't meet the standards and then with the addition they further don't meet the standard. He said that is why he asked the question about more shoppers. If in fact it wouldn't increase shopping visits, then there isn't an increased demand on the parking lot. Small said that he does appreciate some of the changes and modifications like the stop bars, the bicycle parking, and transit stop. He thinks those are good improvements. He said that, while he doesn't know if they have fully satisfied the requirements, he thinks they have made significant enough changes that this is an acceptable plan. McIntyre said this could be looked at two ways. It could be a defensive move to compete with the expansion of Wal-Mart and inclusion of groceries. If Fred Meyer doesn't do anything, there is the potential loss of customers due to natural attrition going to the new Wal-Mart. Also, it is a safety factor to protect what they have. McIntyre thinks it is a great idea and he is much in favor of it. He thinks the transit stop on the side of the building is good because currently the transit bus stops right in front of the main entrance. But, he noted that it looks like the bus will still pull off 101, pull up to the transit stop, and move around the front of the store and out the current NE 20th entrance. He said that he works for the school district and travels NE 20th every day. One thing he notices is that if there is traffic congestion, it is at that entrance off 20th with people coming out and going to the signal at 101. He said he doesn't know how they can mitigate that, but it is a concern. McIntyre said that based on his past retail experience, you have to look at the fact that typically you don't expand a store if you don't think it will increase business. It just doesn't pencil out, but he understands you protect what you do have. He noted that this store does a great business, and he anticipates there will be some increase in traffic. He said those are his only concerns. Other than that, he thinks it is a great plan and a great opportunity for the City of Newport to have a relatively new Fred Meyer. McIntyre complimented them on that. Patrick said he is in favor of the proposal. He is also in favor of not increasing the parking so that it doesn't end up looking like Wal-Mart with a lot of parking it doesn't need. He said he would just as soon look at the store. If they think it won't increase shopping trips, it is their data. If they think they can make the store work with that size parking lot and additional square footage, he's happy with that.

MOTION was made by Commissioner Croteau, seconded by Commissioner East, to approve the amendment in File No. 2-ADJ-11 as written. The motion carried unanimously in a voice vote.

Legislative Hearings.

2. File No. 1-Z-11. Zoning Ordinance text amendments to Section 2-4-11 ("Bed & Breakfast and Vacation Rental Facilities"), Section 2-1-1.101 ("Definitions"), and Section 2-2-1 ("Zoning Districts") to clarify how the City regulates these establishments and to incorporate recommended changes to those rules. The Planning Commission will make a recommendation on this matter to the City Council.

Patrick opened the public hearing for File No. 1-Z-11 at 7:33 p.m. by reading the summary of the file from the agenda. He noted that this is not the final hearing. He said the intention is to take testimony and go back and work on this. He said it is a work in progress. Patrick asked for the staff report. Tokos noted that the staff memo outlines the process to date and includes copies of the draft ordinance and a matrix that outlines the criteria and how that came about based on public feedback and how it was addressed. Tokos noted that the process began back in March of 2011 when the Commission decided that the existing codes were in poor shape and needed to be overhauled. The Commission appointed an ad hoc group consisting of folks familiar with these issues to work with staff. That group met seven times; five of those were to put a proposal together. They looked at codes from nine jurisdictions getting a sense of how others deal with vacation rentals and bed and breakfast issues. After the fifth meeting, they had a draft proposal, which was presented at a public open house last September. Notices of that open house were distributed through the water bills and press releases. At that open house, we received public feedback. The Planning Commission and ad hoc committee members were present at that open house. The comments received were taken back, and the ad hoc group met two more times to make adjustments based on that feedback. The Planning Commission stayed engaged. Tokos noted that the materials are posted on the City's website as well. Tokos said that right now the City's code is definition-driven. In residential districts, it's basically weekly rentals, where it is no more than ten occurrences in a calendar year. It's not restricted in commercial. If it's in the R-4 zone, you can seek a conditional use permit to use it as a hotel/motel use. The R-3 and R-4 zones allow B&Bs. The criteria for a conditional use permit are not specific for these types of uses. They are broad

standards. The Planning Commission's reasoning for doing the amendments is that the ten occurrences have proven to be unenforceable. In addition, conditional uses have been applied differently over time; and maybe there were different standards applied one year than in another year. There have been issues with the conditional use being understood by current owners, but then new owners are less familiar with the rules. The proposal is structured around allowing these uses anywhere, provided certain standards are met. It will be market-driven. Those standards are set out in the code, such as occupancy, parking, waste disposal, and contacts. These approvals are personal to the owner. It's designed so that when a new owner acquires the property, they need to understand those rules and sign off. There is a provision for a building inspection by the building official because when single-family residences are built, they are not approved with vacation rentals in mind and sometimes they are not to code. When the commercial component is introduced, the concerns go up a little bit. The purpose is to afford folks a safe place to stay. Tokos noted that the matrix in the packet and on the website goes through each item by item and explains the ad hoc's rationale for each of these. Much of it was borrowed from other jurisdictions, so a lot of the proposed code has actually been in place by other jurisdictions. Tokos noted that the Commissioners were also provided with the three letters received prior to the meeting. Fisher said that updating this portion of the code isn't a simple task. He asked Tokos what the definition is for "person" where it refers to "two persons per bedroom" and if an infant would be a person or if they could be in the bedroom with their parents. Tokos said that there were different definitions for occupancy; sometimes it distinguished and sometimes it didn't. The ad hoc committee thought that saying "two persons per bedroom" was appropriate. Therefore, a baby would be a person. Fisher thought that could be better written. Tokos said these are setting a maximum occupancy. Tokos was asked if emergency provisions are part of the regulations we have now for hotels and motels. Tokos noted that regarding emergency preparedness addressed in Norm Ferber's letter, hotels and motels are required to have evacuation routes posted in every room, and they must have fire suppression systems and fire alarms. Those requirements are to get people out and accounted for in case of a fire or something. It does not extend to FEMA. Hotels don't have to provide water; but they typically do have first aid kits, which is more of an insurance requirement; where the other is more fire code. While tsunami maps are something the Fire Department supports and suggests that hotels have, Tokos doesn't believe that is a current code requirement.

Interested Parties: Bonnie Saxton, Advantage Real Estate, 1081 SE 1st St, Newport. Saxton noted that she had attended the open house and thought there was a lot of good input there. She said that being in real estate; she has heard both sides of this story. On the whole, she is for it; especially with provisions for parking, which seems to be one of the biggest issues, and garbage too. Also important is the notification to the home owners' association or subdivision if there is one. She said that there are certain subdivisions that don't allow any rentals so it's good to put the neighborhood on notice of what is going to happen. Saxton said that she had set in on a meeting where they were talking about the business licenses and rentals. She wondered if someone has a vacation rental and has it managed by a property manager, the PM has the license and pays the transient room tax so does the owner need an additional license. She was unsure whatever became of that discussion. She wondered about monthly rentals. She suggested that whatever the City decides about this, to do it the same across the board whether it's a monthly rental or a vacation rental. She thinks that is important. She thinks it's really good that the City knows who to contact in an emergency. She said she isn't sure about the tsunami evacuation. If they are not in a tsunami zone, why should they have that? She disagrees with the thought that we would want a tenant to know how to turn off the water or gas; an emergency person should be responsible for that. She said that several years ago she was against B&Bs in any residential zone; but since then, the economy has really changed. She has seen people lose their homes, and now it's harder to sell homes if people can't utilize them for some uses. She said that Newport is a tourist destination. If it doesn't impact other neighbors with garbage and noise, which are regulated, she is all for it. Small asked Saxton if she was for vacation rentals in all zones; and she said yes, the way it is written up. Fisher didn't see a problem with having information about the logs that roll on the beaches or about tsunamis even though they are not on the beach, many people go to the beach. He doesn't think it hurts to have it.

Lill Patrick of Dolphin Real Estate. Patrick said that she has been doing property management and vacation rentals in Newport since 1978. She also manages monthly rentals. She said that she has had very few problems with vacation rentals. She said she doesn't think she ever had police called to one of their vacation rentals. They have contracts with people; they know who they are, where they come from, and what vehicles they have. Patrick wondered why what's good for vacation rentals shouldn't be the same for monthly rentals and homeowners. She thought that some items in this code are discretionary to vacation rentals. Regarding the emergency kits, there is no insurance that she knows of that requires that. Smoke alarms, CO2 monitors, fire extinguishers are standard in most rentals. Regarding noise levels, the City has an ordinance that certainly can be enforced. Regarding inspections, the City doesn't require regular rentals to be inspected, so why would you require vacation rentals to be. The market will take care of that. If the property is not kept up, they won't be rented. She wondered if the building code applied will be when the structure was built or the current code. Many couldn't afford to update their properties. She said it seems only the building official is qualified to do the inspections unless he has someone trained to do that. That will involve a lot of time and expense; and in this economy, the City doesn't need a whole lot of extra expenses. Patrick asked what kind of complaints the code is talking about. Tokos explained that complaints typically tend to involve noise, parking, waste disposal, unattended garbage cans, excessive number of people in the building, or too frequent change of renters. Patrick said that north county is totally different than here. Regarding keeping a written log of complaints, she said they handle complaints when they happen. A written log is more paperwork than they need. She said that not once has the City asked for information on any of their rentals. They have never been audited by the City for room tax. She noted that where the code leaves it up to resolution by the City Council, it needs to be specified so somebody can go on line and know what they have to have without leaving it up to the City Council to change that from one time to the next. She said the Planning Commission should look hard at more regulations.

Certain regulations are fine. She said to consider in Nye Beach the possibility for garbage cans being screened. Many homes have a garage and a place to put garbage cans; but in Nye Beach there is not a place. They have to be put on the street where they are collected.

Mike Rickus, 150 NW 73rd Ct, Newport. Rickus wanted to explain the horror story about that vacation rental situation in their neighborhood. They have talked to the enforcement officer, talked to the City Council, met with the former City Attorney and Tokos. He said the current rules don't work; we need new rules. The current rules are not enforceable. The City cannot enforce what they have. Also, he said the City is getting shorted in taxes. He explained that there is a piece of property in their neighborhood being rented through VRBO on the website and not through an agent. Croteau asked in what zone, and Rickus said R-1. Rickus further noted that he doesn't think the City should allow daily rentals in the R-1 zone. He said this property is rented basically by the day the entire summer and periodically the rest of the year. Summer is the big time. There have been as many as thirty people there at a time. The streets were littered with SUVs, ATVs, motorcycles, etc. He noted that the new code talks about off-street parking. He said it is a serious problem as it currently exists. He said it got to the point where the City Attorney drew up a specific agreement for this specific purpose. That owner said he was trying to sell the property. When the City Attorney contacted him, he rented the property for nine months at a time, so now he is only renting three months on a daily basis. Rickus said it is a daily rental issue and when groups of people come in. He said that in the R-1 zone it is different for B&Bs because when someone goes to a B&B, they don't bring twelve relatives and friends and have parties. There have been beer cans thrown off balconies. Rickus said anyone would say they don't want this next to them. It doesn't increase their property values. They have been frustrated by the empathy to enforce the existing ordinance. The neighbors have taken down license plates. They went to the Finance Department to see if they are paying taxes. The City has told them that they don't have the "teeth" it needs to do anything about it. He said not everybody is honorable in their intentions. Rickus said that he would like the Commission to consider the impact in R-1 versus R-3 or R-4. He doesn't think that daily rentals should be in an R-1 zone. He said that a two-week minimum in R-1 doesn't seem unreasonable. Rickus said we will continue this discussion.

Neal Glaske, 151 NW 73rd Ct, Newport. Glaske is another neighbor in that neighborhood on 73rd. He noted that the vacation rental house has three garbage cans that are full. They put them out on Friday, and their garbage pickup day is on Monday. At the coast the wind blows. He spends time picking up their garbage. Glaske said they come with thirty people. The neighbors called the city official to come down, and he told them it is unenforceable. Glaske suggested that while looking at these changes, to make them enforceable. He agreed that R-1 shouldn't have rentals. McIntyre asked if he meant short-term rentals, and Glaske confirmed that he meant daily rentals.

Chris Minor, attorney representing John Clark of the Whaler Motel. Minor said that he lives in an area where there are two vacation rentals to the south and one to the north. He said that he has had better luck than the previous speakers. Minor said what concerns him a bit is to make sweeping changes because we can't enforce what we have on the books. He said that what has just been described is something that you could do something about under existing laws. Minor said that the concern of his client is that all of their property holdings are in the C-2 zone. They have a 73-unit motel and four individual houses that they rent out. He said that Mr. Clark said he doesn't keep a log of complaints, but he hasn't had one in the thirty years he's been operating. Minor said they don't think the City has a problem in the C-2 zone other than perhaps missing out on some room tax. He believes there are better and easier ways to collect room tax. Minor said that his client is more than happy to register or get another business license if it's called for. Clark fills out his room tax reports faithfully. If someone is renting and thinks they aren't going to be discovered so are not filing room taxes, something can be done; but sometimes enforcement doesn't happen. Minor said that many times when something noncompliant happens, we come to the conclusion that we need to create a new law rather than deal with enforcement. Minor said they believe that the ordinance doesn't need to apply to the C-2 zone because as far as they know there is no problem in that zone. Although it doesn't impact his client, it's fine if the City beefs up the registration or room tax reporting requirements. Minor noted that traditionally, residential has not been encouraged on the lowest portions of buildings in commercial zones; as he recalls only the upper floors. You have it now as an outright use, and he doesn't see anything preventing an owner of commercial property building a residence to become a residential rental property. Once it comes into existence, it will look a lot like a house. If they lose their license to operate it as a residential rental, you have a house and will be under pressure to let them occupy it as a house. Minor said that they don't care if the City allows vacation rentals in the R-1 zone or not. If the City wants to prohibit them, they are fine with that. He added that maybe that isn't a use that is truly compatible. In the written materials Minor submitted, he made a number of comments; but basically their concern is that they don't want to see a loss of ability to continue rentals because they don't meet some new building code. Minor said that Lill Patrick made the point that if the building codes are applied as of the date of construction, unless there is some new construction, they don't have to update in order to comply with the new codes every year. He said it is also going to be very difficult to inspect to determine compliance. If the City applies the building code as of the date of constructions of the building, you will have a hard time determining what those standards are. He wondered how far the City wants to get into that issue. Minor said that he believes someone said that we don't really want to get into having tourist visitors turning off gas and disconnecting water. He doesn't think the gas company goes for that, and the city says the property owner is not supposed to turn off their own water. Minor said he is not an EMT, but has had first aid training. He doesn't think you want people to use a first aid kit if they don't have training. Minor said there are a number of issues the Commission is going to have to look at. He noted that a lot of work went into this, and more will. He said their concern is not being put in a position where they have to reapply if they sell their business or houses as residential rentals. What are the chances that the new owner is not going to be

able to get a permit? What if the doubt surrounding that prevents a sale? Fisher agreed that rules and regulations should be reasonable, and they need to be enforced. He said this project has taken a lot of time, but there are areas where the Commission should go back and do a little cleanup. He noted that Bob Berman's letter states that in general the city doesn't allow businesses to operate in residential areas and shouldn't allow it now. He wondered legally how difficult it would be to limit in zones. He thinks it makes it difficult for the City to control. Minor said the easiest way would be to prohibit them outright in certain zones. Fisher said that he lives in a fairly nice neighborhood that is zoned R-4. He could have a vacation rental next to him, but in an R-1 zone they wouldn't. He thinks it is difficult to dig through all this. Minor said the City does that with other things. There are things allowed in R-4 not allowed in R-1. He thinks the City can do this. He said it's not a piece of cake. The City has to have resources to devote to enforcement if you adopt the ordinance. You will need a whole lot more of enforcement. Sarazin asked Tokos to recap under the current ordinance in what zones vacation rentals are allowed. Tokos said in all residential zones if they don't exceed the ten occurrences in a calendar year. He said the ad hoc group looked at using zoning districts for whether to allow vacation rentals. The issue was our zoning districts were not set up with vacation rentals in mind. The thought was the view of the ocean will have more to do with it. The ad hoc group felt it wasn't a justifiable way to go about tackling that. Croteau asked if when there is a sale of a business, if the license goes with that business. Minor said that most business sales would not go through if there were uncertainty of the ability to obtain a new license. When a business changes hands, a new license has to be obtained, but there are not criteria determining whether or not that license will be issued. In this proposal, when a new owner decides they want to apply for a license, they will be inspected and will be subject to a whole lot of scrutiny. There is a lack of guarantee what will be applied; original construction standards or the current. A normal business license is simply in the nature of a tax and a means of keeping track of who is where. This endorsement really becomes a land use approval. If a house or building had a conditional use permit, it would be devastating if with the sale the buyer had to go get a new conditional use permit not knowing whether they would get it or not. Minor said that they don't care how many licenses or what kind of registration the City wants them to get. The log is not a problem where they have never had a complaint to log in.

Mike Rickus had an additional comment. He noted that with the existing ordinance regarding the ten times, in their particular case the City was told that those people were friends, family, or business associates that he didn't charge. Rickus again said that the current ordinance as written is unenforceable. He said we can't live with what we have.

Lee Hardy, Yaquina Bay Property Management, testified next. Hardy was on the ad hoc committee. She said that there was a lot of back and forth regarding enforcement. At the same time she was on the business license task force. She noted that one of the changes in business licenses being proposed is licensing property owners themselves. That would accomplish an identification of who is renting what. She said that is a first step needed to enforce this ordinance. She wondered how you can enforce the ten times or more if you don't even know who is doing it. She said there was a lot of going back and forth regarding the coming and going and not knowing your neighbors. There is a nuisance ordinance in place already that could be enforced. One of the people dealing with a rental in R-1 didn't want to bother the police with complaints of noise and traffic. They didn't want to become known as a complainer. Hardy said that is what the police department is for. She thinks the Commission might want to sit down with the police department and see what is feasible with their abilities. She had talked to a long-time police officer about how many times he has responded to a complaint at a vacation rental, and he said maybe five times in his 20 years. He said it's the locals that cause problems. Hardy said the City has to start structuring regulations better than they are now. She suggested maybe taking a look at whether the City will be able to enforce the regulations. She said to get some feedback from law enforcement and fire department staff. Hardy said that long-term rentals have natural protection with landlord/tenant laws; nightly rentals don't in a commercial situation. Those renters pay their money and take their chances. It is to provide assurance of a safe place to stay. Hardy thinks the discussion is not over yet; there is more to do.

Kevin and Janet Cornelius. Cornelius lives in Philomath and own two vacation rentals in Newport. He said that they got their business license in October 2006. They bought an existing vacation rental and went through the same process as the previous owner did. They bought another house up the street and put it in as a vacation rental. Cornelius said they collected \$8400 in room taxes for the City last year. He said he is impressed that the people who came to the previous meeting had an impact. He is happy to find out that Newport operates differently. He said it was a thrill to get the letter that some of the changes that people suggested were implemented. He said that a couple of issues he sees are parking and landscaping. He said their properties are in the Nye Beach area. The lots are 50 feet wide, and the house takes up a lot of that 50 feet. There is a 2-car garage facing the street with a driveway. Any grass they have is in the back yard. He said that if they park in the garage, seven cars can park off-street at their 4-bedroom house. He noted that in order to meet what the code currently suggests (50% being landscaped); he would have to dig up concrete and plant lawn greatly reducing the parking. He said he doesn't know if he can get two cars in the garage. Cornelius said it seemed that these two requirements are at odds with each other. One of the houses is on High Street, and he said that looking in that neighborhood, people either have a garage or no garage and have lawn. He said the City will be eliminating a lot of possible sources of City revenue from room tax. Cornelius would like to see some of the ideas raised here tonight implemented. He said maybe there should be a business license for each house. If the one out on 73rd Street doesn't have a business license and he advertises on VRBO, he can be shut down. Everybody in this business should be forced to collect room tax. Cornelius said that one of the changes he appreciates is that they don't have to post on the door. He said that people choose to stay in a house because they don't want to stay in a hotel. If they have to post on the door the same as hotels, it lessens the flavor of what these people were trying to get. Mrs. Cornelius said that she appreciates the opportunity of the open house and this meeting. She agrees that the City needs to decide between parking or landscaping and what the City would rather have. She

said that the occupancy issue is another one of those things that will be impossible to enforce. She noted that their homes are close to each other. People rent them to come to a wedding. They go to the event and come to one of the houses to congregate before or after the wedding. She said there are more people than actually stay at the house. Those that rented the house are the ones sleeping there, but for hours there are more there than are staying at the house. She said she can tell them that they can't do that, but she can't actually enforce that. If they got out of hand, then the noise ordinance can go into play. She said the fire code is fine for people staying at the house, but to say they can't have more than that coming into the house is when you get into a situation that we won't be able to enforce. Cornelius would like to see that stricken. She said they are in favor of the policies that can be enforced. She suggested making improvements to the ordinance where it is fair across the board. McIntyre asked if the people that rent their house through VRBO don't have to be licensed to rent their home as a vacation rental. Cornelius said that VRBO doesn't require them to be licensed in order to be listed. Mrs. Cornelius added that it would be easy for the City to go through the list of those on VRBO.

Lill Patrick had an additional comment about the 30-minute response time. She noted that even our police don't make 30-minute responses unless there is someone injured.

Chair Patrick closed the public hearing at 8:35 p.m. for Commission deliberation. McIntyre said he knows that one of the toughest parts is enforcing whatever we come up with. He thinks there is a lot more we need to do and discuss in sessions. He said he knows there are many issues and he understands both sides. McIntyre said that he thinks we need to get a real good method of controlling who does short-term, day-to-day rentals. He said he is unsure we can restrict it from certain residential zones. He is in a quandary of how to come up with something that works really well there. McIntyre thinks we need a lot more discussion and input. Small agreed that this needs more work, and we need more discussion and input. He said he was impressed by several things tonight. Those who are in the business of managing their own properties or someone else's property are self-policing. His impression is that those rogue VRBOs are causing the problems. He made a note to himself not to punish those who are doing the right thing. He said more regulations may not be the answer, especially if they are not enforceable or we are not willing to enforce the regulations. Small thinks there are some good things in this code. It is in process, but is not there yet. There needs to be more discussion here and decisions made. Croteau said that he couldn't agree more. He said the big issue is where we should regulate and where we shouldn't. He said most complaints seem to be in R-1 and R-2 where they are operated through VRBO. Commercial is being done according to principles. Fisher agreed with the other three. He said it's the ones causing problems we should go after, the others we should try to enable. He said it does come down to money, because this is a business. Fisher noted that a comment in Norm Ferber's letter was that the City, with property taxes and room taxes, are major recipients from the lodging industry. Operators donate 10.5% off the top to the benefit of the city and state. Fisher said that is a significant contribution. Fisher further noted that Norm Ferber wrote about protecting the character of residential neighborhoods; and he agreed that is a real problem. If there are very few problems maybe it can be handled by hitting those individually; and at some point if we see a continuing problem, then we have to take action for a group. Fisher noted that Ferber also had a comment about the difficulty of putting property up for sale when a buyer realizes there is no guarantee of the continued existence based on a whim of the city government. When you are ready to retire, it would be nice if those people know they could continue the business. Fisher noted that Ferber also talks about policing problems of vacation rentals. He said that Ferber also appended a copy of the emergency preparedness from the Red Cross and FEMA. Fisher said maybe we would have a 5-item kit, not all that is listed. He said that at some point you wonder about it. Fisher pointed out that Ferber ends his letter with a comment that the city government's purpose was to inhibit business growth. Fisher said we have to look at it as a business. Fisher noted that Gary Mines had talked about people living next door to vacation rentals having to deal with loud parties, and then it goes downhill from there. Fisher said we can't blame it all on college students. Fisher continued that Bob Berman made a comment about allowing commercial businesses in residential neighborhoods. Fisher said that we did a lot of discussion and looking into these questions. Fisher read from Chris Minor's letter talking about emergency preparedness. Fisher said if it's used as a business, it has to have fire alarms and smoke detectors. Fisher agreed, as McIntyre had said, that we need to look at a lot of this and reach definitive conclusions and bring it back to another public meeting where people can have more input. East thanked everybody for coming and providing great comments. He said we want to make sure this is fair across the board for everybody. He said we have a lot to consider and look at and bring it back. Sarazin was in agreement that more discussion is needed. She said that when this process started, we wanted maximum input from everybody. She said she is not a vacation rental owner nor is affected by one. She said that is why the Commission formed an ad hoc committee with that experience, which did an outstanding job and helped a lot. Sarazin said that she would be in favor of what Lee Hardy had said earlier about getting together with Officer Kittle and the police department to see if what we are creating has any "teeth". She doesn't know if that has been done or not. She asked if anyone from the police department reviewed it, and Tokos said he had shared it with them. Sarazin said that she would like to specifically ask them to give input. She said she does favor more input and more discussion. Patrick said he shared everybody's opinion. He said one thing he hadn't considered that was raised tonight was a one- or two-week rental requirement in R-1 zones. Sarazin asked if that wouldn't be back to where we are now with the ten occurrences. Patrick said to tackle the license enforcement, if a property is advertised for rent, could that be considered renting. Tokos said that is in there. Patrick said the Commission will probably throw out the emergency kit requirement, but the informational-type things should probably be kept. He also thought we have problems with inspections and codes. Patrick thought we had taken out the 1 per 200 square feet. Tokos said at the advice of legal counsel, we didn't want them both in there. It was decided we would show the 200 square feet in informational material, but just reference the fire code in the code. Tokos said one avenue is to continue the hearing to February 27th, which would give the Commission two work sessions between

now and then. He said tonight we received specific comments. We could work through that at those two work sessions and get the draft to where you want it. Tokos said he could discuss this further with the police department. He would like to close what we have on February 27th with what we are responding to. Patrick said he didn't understand Norm Ferber's concern about transferring a license. Tokos said that he will clarify that. He doesn't think Ferber understands that was modified following the open house. He explained that if they are operating today but can't meet one of the standards required today (such as parking), as long as they come in within 120 days to get their endorsement, they can rely on the current approval. They have to meet the other requirements. That would transfer from owner to owner and only expire if a business license lapses for twelve months or more. Tokos noted that the other outlet of a conditional use permit is still going to be there. If an operator can't meet the standards, they have the option of going to the Planning Commission to ask for a conditional use permit. That would transfer from owner to owner. If it's transferred, a new owner has to come in and check off on an endorsement. He said that the ad hoc group went through great pains to come up with those. He thinks it is workable; we just need to explain it a little better. He said we can put more thought to what building code is used. He said we do need to make sure it doesn't inadvertently allow residential to be built in commercial zones to be used for vacation rentals. Tokos said that he believes that tonight we received specific and clear testimony, and he can certainly address that at the next work session. East asked about a large hotel that operates several individual units and if that wouldn't be covered under their business license. Tokos explained that this is set up that it would be one business license with endorsements for each of the houses. Patrick said the Commission also has to be careful how we ratchet this down. If vacation rentals are now allowed in any residential zone and we restrict that, it becomes a taking issue. Fisher said that there was no reason those zones couldn't stay ten times, but the others said there was because that is unenforceable. Patrick wondered if corporations have to apply when they change ownership. Tokos said that when entities change, part of that is so they come in and let the City know. Presumably the rest of the ownership shouldn't be an issue. Patrick noted that anyone that buys a business with a liquor license has a process to go through so that they are not guaranteed they will get a liquor license. Sarazin wondered if the Commission meets on January 23rd and February 13th for work sessions, if Tokos would be able to do a draft for review by Officer Kittle or someone from the police department and ask them to be present on February 27th to give their enforcement view. Tokos said the input could be discussed at the work session on January 23rd. The draft could be fine-tuned at work session on February 13th. He then could get the draft to the police department and those in attendance to look at to see how we are dealing with the input a week prior to the February 27th meeting. He said he could have it available on Friday, February 17th.

MOTION was made by Commissioner Sarazin, seconded by Commissioner McIntyre, to continue deliberation on this matter on February 27th after working through changes made to the draft ordinance based on tonight's testimony at a work session on January 23rd and then fine tuning the draft code at a work session on February 13th. Written testimony, preferably directed toward comments received tonight and changes made, will be accepted until February 27th. The motion carried unanimously in a voice vote.

G. Unfinished Business.

1. Discuss status of SW 12th Street Vacation. Tokos explained that the City Council denied the street vacation in a 5-2 vote. He said their reasoning was that they didn't feel that the property owners had a compelling case for the need of that right-of-way. They took the Public Works Director's testimony over the neighbors. They pressed the applicants for why they needed the vacation, and all they could come up with was for peace of mind down the road that a sidewalk will not be right in front of their houses. Ms. Huff was able to put up a picket fence through an encroachment permit. The Council thought the recommendation from the Commission was very reasonable, but the City will look very critically at vacations that involve rights-of-way that are improved, even if under-improved. The Council thought it was best to hold on to that right-of-way for now.

2. Update on status of Tree City USA. Tokos noted that the process for a "Tree City USA" designation is moving along; and the Commission will see that again soon. He said the Parks and Recreation Committee are on board and has embraced their new role. McIntyre asked about the benefit of this designation. Tokos said mostly PR benefit, and it may be advantageous for grants. He believes it is more about controlling what gets planted in the right-of-way next to sidewalks and streets so that it doesn't destroy our infrastructure and what is planted in parks is what will survive. It helps to organize ourselves a little better.

H. Director's Comments. Tokos had no additional comments.

I. Adjournment. Having no further business to discuss, the meeting was adjourned at 9:06 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

**BEFORE THE PLANNING COMMISSION
OF THE CITY OF NEWPORT,
COUNTY OF LINCOLN, STATE OF OREGON**

**IN THE MATTER OF PLANNING COMMISSION)
FILE NO. 2-ADJ-11, APPLICATION FOR AN) FINAL
ADJUSTMENT, AS SUBMITTED BY FRED MEYER) ORDER
STORES, INC (BRIAN PETERS, MULVANNYG2)
ARCHITECTURE, AUTHORIZED REPRESENTATIVE))**

ORDER APPROVING AN ADJUSTMENT to Section 2-3-6.015/“Number of Parking Spaces Required” of the Newport Zoning Ordinance (NZO) (No. 1308, as amended), for the remodel and expansion of a Fred Meyer retail store. With the proposed additional retail space, the square footage would require Fred Meyer to provide 528 parking spaces, but they are proposing 408 spaces; which would be a shortage of 120 spaces, or 22.7%, of the parking requirement. The subject property is located at 150 NE 20th St (Assessor's Map 11-11-05-AB, Tax Lots 3000, 3200, and 3400).

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance (No. 1308, as amended); and
- 2.) The Planning Commission has duly held a public hearing on the request for an adjustment, with a public hearing a matter of record of the Planning Commission on January 9, 2012; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence, including testimony and evidence on behalf of the applicant, and from Community Development Department staff; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, **APPROVED** the request for the adjustment.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the adjustment as requested by the applicant with the following condition(s):

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. The property owner shall incorporate a bus shelter into the design of the relocated transit stop. Such shelter should be consistent in size and style to other shelters located within the city.
3. The property owner shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The property owner is responsible for obtaining the necessary approvals and permits pertaining to the proposed use.
4. Pursuant to Section 2-6-1.070/"Expiration and Extension of Decision" of the Newport Zoning Ordinance, this approval shall be void after 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.

BASED UPON THE ABOVE, the Planning Commission determines that the request for an adjustment is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 23rd day of January, 2012.

James Patrick, Chair
Newport Planning Commission

Attest:

Derrick I. Tokos, AICP
Community Development Director

EXHIBIT "A"

Case File No. 2-ADJ-11

FINDINGS OF FACT

1. Fred Meyer Stores, Inc. (Brian Peters, MulvannyG2 Architecture, authorized representative) submitted a request on December 13, 2011 for approval of an adjustment to Section 2-3-6.015/"Number of Parking Spaces Required" of the Newport Zoning Ordinance (NZO) (No. 1308, as amended), for the remodel and expansion of their retail store. With the proposed additional retail space, the square footage would require Fred Meyer to provide 528 parking spaces, but they are proposing 408 spaces; which would be a shortage of 120 spaces, or 22.7%, of the parking requirement.
2. The subject property is located at 150 NE 20th St (Assessor's Map 11-11-05-AB, Tax Lots 3000, 3200, and 3400).
3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: Commercial.
 - b. Zone Designation: C-1/"Retail and Service Commercial".
 - c. Surrounding Land Uses and Zoning: Surrounding uses other retail and service commercial and single-family and multi-family residences. See Planning Staff Report Attachment "C" (Zoning Map of Area).
 - d. Topography: The property is flat with no vegetation.
 - e. Existing Structures: Fred Meyer store.
 - f. Utilities: All are available to the subject property.
 - g. Past Land Use Actions:
 - h. Notification: All affected property owners within 200 feet, applicable city departments, and other agencies were notified on December 20, 2011. See Planning Staff Report Attachment "B" (Public Hearing Notice and Map). The public hearing notice was published in the Newport News-Times on December 30, 2011.
4. NZO 2-3-6.015 establishes the number of off-street parking spaces a use shall provide. General Retail uses are required to provide one space for every 300 square feet of gross floor area. Fred Meyer is proposing an interior remodel of their existing store. The remodel will include the addition of a mezzanine measuring approximately 15,400 square feet in floor area.
5. The applicant is seeking approval of a parking adjustment to allow the property to provide 22.7% less parking than required by the Newport code. With the addition of the proposed remodel, the store would contain approximately 158,300 square feet. At the required rate of one space per 300 square feet of gross floor area for general retail, Fred Meyer would need to provide

528 parking spaces. The applicant is proposing to provide 408 spaces, or a shortage of 120 parking stalls.

6. Recognizing the additional demands that the expansion will have on existing parking areas, the applicant is proposing pedestrian and vehicle safety improvements to offset this impact. A new raised concrete sidewalk is proposed from 20th Street to the main store entrances. Five (5) employee spaces will be added to the rear of the building and 18 new bicycle parking spaces to the front of the store. The new bike parking will support cycling as an alternate form of transportation and thus will offset the need to drive a vehicle to the site and use parking spaces. The bike parking can also serve as park/ride link for transit riders. Stop bars will be added at angled drives adjacent to the bottle return to improve safety at that intersection. A dedicated transit stop is also proposed, south of the bottle return, shifting the transit pick-up location away from the more heavily trafficked middle entrance area.

7. A deviation of greater than 10%, but less than or equal to 40%, of a numerical standard shall satisfy criteria for an Adjustment as determined by the Planning Commission using a Type III decision making procedure (NZO Section 2-5-2.015(A)). The requested deviation is a 22.7% reduction from the parking requirement, so Planning Commission approval of the Adjustment is required.

8. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on December 20, 2011, to property owners within 200 feet required to receive such notice by the Newport Zoning Ordinance, and to various City departments and other agencies. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., January 9, 2012. Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on December 30, 2011. Written comments were received from Cynda Bruce, Program Director, Lincoln County Transit, in support of establishing the dedicated transit stop and bus shelter. This was the only case related correspondence received by the Community Development Department.

9. A public hearing was held on January 9, 2012. At the hearing, the Planning Commission received the staff report and oral testimony from Chris Ferko of Barnhausen Consulting Engineers and Tom Gibbons with Fred Meyer Real Estate on behalf of the applicant. The set of minutes of the January 9, 2012, meeting is hereby incorporated by reference into the findings. The Planning Staff Report with Attachments is hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

- Attachment "A" – Applicant's Written Narrative and Findings
- Attachment "A-1" – Pedestrian Amenities Plan (reduced)
- Attachment "B" – Public Hearing Notice and Map
- Attachment "C" – Zoning Map of Area
- Attachment "D" – Aerial Photograph
- Attachment "E" – Section 2-3-6 of the Zoning Ordinance.

10. The applicable criteria for approval of an adjustment are found in NZO Section 2-5-2.025 as follows:

- i. That granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
- ii. That any impacts resulting from the adjustment are mitigated to the extent practical; and
- iii. That the adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access; and
- iv. That if more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district.

CONCLUSIONS

Criterion #1. That granting the adjustment will equally or better meet the purpose of the regulation to be modified.

1. In regard to this criterion, the Planning Commission considered whether the applicant has sufficiently demonstrated that granting the adjustment will equally or better meet the purpose of the regulation to be modified.
2. Minimum off-street parking standards ensure that surface lots are designed with a sufficient number of parking spaces and possess adequately sized drive isles so that the public can conveniently and safely access a business. This also enhances the property values.
3. The applicant has submitted findings in regard to this criterion in Planning Staff Report Attachment "A" (Applicant's Written Narrative and Findings). The applicant states that the granting of the adjustment will better meet the purpose of the parking requirement because it will improve pedestrian safety facilitate alternative modes of transportation (bikes and walking), and supplement mass transit.
4. Proposed improvements are illustrated on Attachment "A-1" (Pedestrian Amenities Plan (reduced)). They include a six (6) foot wide raised sidewalk and painted crosswalks connecting NE 20th Street to the Fred Meyer store; 18 new bike stalls; new stop bars at the intersection adjacent to the bottle return; a new dedicated transit stop south of the bottle return; and five (5) new employee parking stalls to the rear of the building.
5. The raised sidewalk and crosswalks improves pedestrian safety for customers accessing the Fred Meyer store from NE 20th Street and nearby parking stalls. The new bike parking will support cycling as an alternative form of transportation and thus will offset some demand for vehicles driving to the site. The bike parking can also serve as a park/ride link for transit riders. The stop bars will improve vehicle safety at the intersection adjacent to the bottle return, and shifting the transit pick-up location away from the more heavily trafficked middle entrance area improves vehicle and pedestrian safety by alleviating congestion and providing a clear, identifiable transit stop. The employee parking spaces offset the loss of parking spaces associated with the development such that there is a net gain on the property of one parking space.

6. Considering the above, the Planning Commission finds that provided these improvements are implemented, granting the adjustment will equally meet the purpose of the parking requirements. This includes Fred Meyer completing the design of the transit stop and installing the shelter.

Criterion #2. That any impacts resulting from the adjustment are mitigated to the extent practical.

7. The applicant's findings indicate that the project will mitigate impacts to parking by improving and supplementing alternative modes of transportation, including walking, biking and mass transit. The addition of a safe walking route into the site helps to mitigate potential conflicts between pedestrians and vehicles. The addition of bicycle parking will mitigate issues of supply and potential theft.
8. New stop bars enhance vehicle safety at an intersection that is confusing to the public because of the number and angle at which the drive isles intersect. While additional safety improvements may be needed at this intersection in the future, such as the elimination of the western most angled approach, placement of the stop bars is a reasonable step for Fred Meyer to take at this time.
9. Provision of a dedicated transit stop mitigates impacts of the expansion by clarifying where transit service is available on the site, and placing it in a location that is removed from the most heavily trafficked areas.
10. By adding employee parking to the rear of the building the proposed enhancements, discussed above, can be accomplished without reducing the number of parking spaces that are available to the public.
11. Given this information, it is reasonable for the Planning Commission to find that impacts of the 15,400 square foot second floor building expansion, as it relates to public use of the associated off-street parking areas, have been mitigated to the extent practical.

Criterion #3. That the adjustment will not interfere with the provision of or access to appropriate utilities, nor will it hinder fire access.

12. The applicant notes that the proposal will not interfere with access to utilities or fire access. Planned parking and drive isle improvements are located in areas that will still allow for fire access, or access to utilities should any exist in the area. The Oregon Fire Code governs fire access needs for the second story, mezzanine expansion, so provided that code is followed the expansion will not hinder fire access. The mezzanine expansion should not impact any utilities. Accordingly, it is reasonable for the Planning Commission to find that granting the adjustment will not interfere with utility or fire access.
13. Based on the above, the Planning Commission concludes that Criterion #3 has been satisfied.

Criterion #4. That if more than one adjustment is being requested, the cumulative effect of the adjustments results in a project that is still consistent with the overall purpose of the zoning district:

14. The only adjustment the applicant is requesting is to the required number of parking spaces; findings for which are addressed above.

15. Based on the above, the Planning Commission concludes that this criterion is satisfied.

OVERALL CONCLUSION

Based on the staff report, the application materials, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate that the applicant has demonstrated compliance with the criteria for granting an adjustment; and, therefore, the request is **APPROVED** with the following conditions of approval:

1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
2. The property owner shall incorporate a bus shelter into the design of the relocated transit stop. Such shelter should be consistent in size and style to other shelters located within the city.
3. The property owner shall comply with all applicable building codes, fire codes, and other public health and safety regulations to ensure that the use will not be detrimental to the safety and health of persons in the neighborhood. The property owner is responsible for obtaining the necessary approvals and permits pertaining to the proposed use.
4. Pursuant to Section 2-6-1.070/"Expiration and Extension of Decision" of the Newport Zoning Ordinance, this approval shall be void after 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.



PLANNING STAFF MEMORANDUM
FILE No. 5-Z-11

- I. **Applicant:** City of Newport.
- II. **Request:** The request before the Planning Commission is to review and to provide a recommendation to the City Council on proposed legislative text amendments to the Newport Zoning Ordinance (NZO) (Ordinance No. 1308, as amended) and Newport Municipal Code to put in place a program for managing the City of Newport's urban tree canopy. The changes will be used to support an application for an Arbor Day Foundation "Tree City USA" designation. The proposal amends Chapters 2.05 (Boards and Commissions), 8.10 (Nuisances), 9.10 (Right-of-Way Permits), and 13.05 (Subdivisions and Partitions) of the Newport Municipal Code, and Section 2-4-3 (Clear Vision Areas) and 2-4-5 (Landscaping Requirements) of the Newport Zoning Ordinance.
- III. **Findings Required:** As this is a legislative action, there are no required findings. In deliberating on this request the Planning Commission must consider whether or not the amendments further a public necessity and are needed for the general welfare of the community (NZO Section 2-5-5.005).
- IV. **Planning Staff Memorandum Attachments:**
- Attachment "A" – Mark-up Copy of Amendments with Rationale, dated 1/20/12.
 - Attachment "B" – Planning Commission Minutes, dated 11/14/11.
 - Attachment "C" – Email from Kristen Ramstad, ODF, dated 12/15/11 (with staff response).
 - Attachment "D" – Minutes from the 12/21/11 Recreation and Parks Committee Meeting.
 - Attachment "E" – Notice of Public Hearing.
- V. **Notification:** The Department of Land Conservation & Development was provided notice of the proposed legislative amendment in accordance with the DLCDC requirements on December 12, 2011. Notice of the Planning Commission hearing was also published in the Newport News-Times on January 13, 2012. See Planning Staff Memorandum Attachment "E" (Notice of Public Hearing).
- VI. **Comments:** Written comments received in response to the notice are included as attachments.
- VII. **Discussion of Request:** The Newport City Council desires that the City obtain a "Tree City USA" designation from the Arbor Day Foundation. To accomplish this, the City must put in place a tree care ordinance for managing its urban tree canopy. The proposed code charges the Parks and Recreation Committee with the responsibility of developing a tree plan for planting, maintaining, or removing trees along streets, and in parks or other public places. The Committee will also be responsible for coordinating an annual Arbor Day celebration and proclamation, and for taking any other steps required to maintain the designation over time.


The City already requires that members of the public obtain permits for the removal of trees within public rights-of-way. That process, administered by the Public Works Department, is being clarified and modified to pick up planting and maintenance of trees, and standards are being put in place for the issuance of permits. Parks staff and others responsible for maintaining City landscaping will be required to review the tree plan annually as an alternative to pulling a permit.

Cross references have been added to the City of Newport Subdivision and Zoning Ordinances to ensure that plantings along streets or public properties associated with new development adhere to the adopted tree plan.

The City of Newport Municipal Code and Zoning Ordinance contain conflicting standards related to the establishment and maintenance of clear vision areas at street intersections. Proposed changes clarify these requirements.

If the proposed changes are found to be acceptable, it is anticipated that they will go into effect at such time as the City Council accepts and approves the tree plan. Public outreach will also be needed so that property owners are aware of the new rules.

VIII. **Conclusion and Recommendation:** The Planning Commission should review the proposed amendments and make a recommendation to the City Council on the request. The Commission recommendation can include suggested changes to the proposed amendments.



Derrick I. Tokos, AICP
Community Development Director
City of Newport

January 20, 2012

January 20, 2012 MARKUP COPY OF NEWPORT MUNICIPAL CODE (NMC) AND NEWPORT ZONING ORDINANCE (NZO) AMENDMENTS TO MEET REQUIREMENTS FOR A TREE CITY USA DESIGNATION

<p>Draft Code Revisions for Tree City USA Designation (latest revisions in strikethrough and <u>double underline</u>)</p>	<p>Rationale for Change</p>
<p>NMC CHAPTER 2.05 BOARDS AND COMMISSIONS *** 2.05.040 Parks and Recreation Committee</p> <p>A. The Parks and Recreation Committee shall consist of five members and shall serve two-year terms. The parks director shall serve ex officio and shall act as secretary for the committee.</p> <p>B. The Parks and Recreation Committee shall have the following rights, responsibilities, and authority:</p> <ol style="list-style-type: none"> 1. To make recommendations to the Council concerning city parks and recreation facilities, including the authority to make studies as necessary to assist their recommendations. Recommendations may include recommendations relating to acquisition, development, use, operation, and disposition of parks and recreation facilities. 2. To make recommendations concerning playground recreational facilities. 3. To make recommendations concerning financial and budgetary matters relating to parks and recreation. 4. To recommend rules and regulations relating to parks and recreation. 5. <u>To serve as the City's "Tree Board," with the responsibility to study, investigate, develop and periodically update a written plan for the care, preservation, pruning, planting, replanting, removal and disposition of trees in parks, along public streets, and in other public places.</u> 	<p>These changes create a "Tree Board," which is one of the requirements for obtaining a Tree City USA designation. The City's Parks and Recreation Committee is proposed to serve in this capacity.</p> <p>The Committee will be charged with preparing a plan for planting, maintaining, and removing trees along streets, and in parks and other public spaces. The plan must include a list of acceptable "street trees," and may also include a heritage tree program.</p> <p>City Council approval is required and the plan must be reviewed once every three years. The Committee is also charged with annually following up with the Arbor Day Foundation to maintain the City's Tree City USA designation.</p> <p>This proposal is tailored after ordinances that were adopted by Seaside and Coos Bay, and represents minimum steps that a jurisdiction can take to obtain a Tree City USA designation.</p>

<p>a. <u>As part of this plan, a list of acceptable species shall be developed and maintained for planting trees along public streets. The list shall provide spacing and planting details for each species, and divide trees into three classes based upon mature height: small (under 30 feet); medium (30 to 50 feet) and large (over 50 feet);</u></p> <p>b. <u>The plan may include criteria for determining, and standards for protecting heritage trees within the city. The purpose of the heritage tree designation is to recognize, foster appreciation of, and protect trees having significance to the community. Criteria may include such things as species rarity, age, size, quality, association with historical events or persons, or scenic enhancement;</u></p> <p>c. <u>A draft of the plan, and any amendments thereof, shall be presented to the City Council and, upon Council acceptance and approval, will constitute the official tree plan for the city; and</u></p> <p>d. <u>The plan shall be reviewed completely at least once in every three-year period after initial approval.</u></p>	<p>6. <u>To obtain the annual Tree City USA designation by the National Arbor Day Foundation, including coordination of an Arbor Day observance and proclamation.</u></p>
<p>The City of Newport's right-of-way permitting process has been interpreted to apply to the removal of trees within the right-of-way, although the existing code is somewhat unclear.</p> <p>Some sort of permitting process is needed to ensure that planting, maintenance, and removal of trees within public rights-of-way, parks or other public places occurs in a manner that is consistent with the adopted tree plan. The proposed changes modify the right-of-way permitting process to serve this purpose.</p>	<p>NMC CHAPTER 9.10 RIGHT-OF-WAY PERMITS</p> <p>***</p> <p>9.10.020 Applicability</p> <p>The requirements of this chapter shall apply to all rights-of-way controlled or administered by the City of Newport, whether as a result of a dedication by plat or deed or agreement with Lincoln County or the State of Oregon. <u>This chapter shall further apply to the planting, pruning, maintenance and removal of trees within parks and other city owned properties.</u></p>

<p>9.10.030 Permit Required</p> <p><u>A.</u> No person may cut, break, dig up, damage in any manner, undermine or tunnel for any purpose in any developed portion of a right-of-way, or obstruct any developed portion of right-of-way, without obtaining a right-of-way permit under this chapter. Developed portions of rights of way include all streets, sidewalks and any other paved or improved area. No person may cut, break, dig up, damage in any manner, undermine or tunnel within any portion of a right of way to place, modify, repair or maintain any utility facility without obtaining a right-of-way permit. No person may construct any street, sidewalk, trail or path within any right-of-way without a right-of-way permit. Application for permits shall be in the form prescribed by the city. Permits shall be issued for a limited time and shall specify the extent of the authority granted by the permit. No permit shall be issued unless the applicant has complied with or is not subject to Chapter 9.05.</p> <p><u>A-B.</u> No person shall plant, prune, or remove a tree within public rights-of-way, public easements, or on city owned property without obtaining a right-of-way permit.</p> <p><u>B-C.</u> Any person who cuts, breaks, digs up, damages in any manner, undermines or tunnels under any unimproved portion of a right of way for non-utility purposes other than as specified in subsections (A) and (B) must obtain an encroachment permit pursuant to Chapter 9.15.</p>	<p>To accomplish this, the scope of right-of-way permits has been expanded to apply to parks and other city owned properties. The relationship between a right-of-way permit and encroachment permit has also been clarified.</p> <p>An implementing ordinance can be crafted such that changes to the right-of-way permitting chapter of the Municipal Code will not go into effect until a tree plan is adopted.</p>
<p>9.10.040 Permit Applications</p> <p>A. Applications for right-of-way permits shall be submitted on forms provided by the city and shall be accompanied by drawings, plans, and specifications in sufficient detail to demonstrate:</p> <ol style="list-style-type: none"> 1. That all work will be performed and any facilities will be constructed in accordance with all applicable codes, rules, and regulations. 	<p>A requirement has been added that persons planting trees along public streets must do so in a manner consistent with the specific standards. Application submittal requirements are also included for proposals to plant, prune or remove trees.</p>

	<p>2. That all work will be performed and any facilities will be constructed by or for a franchisee in accordance with the franchise agreement</p> <p>3. The location, route, and description of all of applicant's new facilities to be installed as well as all of applicant's existing facilities in the construction area, including a cross-section to show the facilities in relation to the existing street, curb, sidewalk, and right-of-way.</p> <p>4. The construction methods to be employed for protection of existing structures, fixtures and facilities and a description of any improvements that the applicant proposes to temporarily or permanently remove or relocate.</p>
	<p><u>4.5. Installation of trees along public streets is in accordance with the subsection 9.10.140.</u></p> <p>B. Applications for right-of-way permits <u>other than for the planting, pruning or removal of trees</u>, shall be accompanied by the following:</p> <ol style="list-style-type: none">1. A verification that the drawings, plans, and specifications submitted with the application comply with all applicable technical codes, rules and regulations. The city may require that the verification be by a registered professional engineer.2. A written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the city engineer.3. The permit fee in an amount to be determined by resolution of the City Council, unless otherwise provided in a franchise agreement or applicable state law. The fee shall be designed to defray the costs of city administration of the construction permit program. Permit fees shall not be charged to any franchisee operating under a currently valid franchise or to any other person using city rights of way under

<p>an agreement with the city that requires payment of a franchise fee.</p> <p>C. <u>Applications for right-of-way permits for planting trees, or pruning or removing trees with a diameter of at least 8-inches dbh (diameter breast height) shall be accompanied by the following:</u></p> <ol style="list-style-type: none"> <u>1. A statement describing the work to be performed; and</u> <u>2. A scaled drawing identifying the size, location, and species of the tree or trees to be planted, pruned or removed. For plantings the drawing shall also include distances between trees and nearby utilities, curbs and sidewalks.</u> <p>***</p>	
<p>[Add new section 9.10.140. All subsequent subsections to be renumbered.]</p> <p><u>9.10.140 Planting, Maintenance and Removal of Trees</u></p> <p><u>A. The planting of trees along public streets shall adhere to the following standards:</u></p> <ol style="list-style-type: none"> <u>1. Only those tree species identified in the city's adopted tree plan may be planted along public streets;</u> <u>2. Spacing between trees shall be in accordance with recommendations contained in the adopted tree plan;</u> <u>3. Only those trees listed as small in the adopted tree plan may be planted under or within 10 lateral feet of any overhead utility wire, underground water line, sewer line, transmission line or other utility;</u> <u>4. Trees shall be setback from curbs and sidewalks by the size classification in the adopted tree plan, as follows: small trees, two feet; medium trees, three feet; and large trees, four feet;</u> 	<p>This new subsection contains specific standards for planting trees along public streets. They are intended to ensure that such plantings do not compromise public infrastructure or increase maintenance costs to the City. Cross references to the adopted tree plan have been added where appropriate.</p> <p>Language is included exempting the City from having to obtain permits. As an alternative, City staff and others performing work on behalf of the City will be required to file paperwork establishing that they have reviewed and will follow the adopted tree plan.</p> <p>An outlet is provided for the City Manager to require the removal of hazard trees irrespective of the adopted tree plan. This could be particularly relevant if a heritage tree program is adopted.</p>

<p>5. <u>No street trees shall be planted closer than 35 feet of a street corner, measured from the point of nearest intersecting curbs, curb lines, or edge of pavement; and</u></p> <p>6. <u>Trees shall be setback at least 10 feet from fire hydrants.</u></p> <p>B. <u>The city shall have the right to plant, prune, maintain, and remove trees within public rights-of-way and city owned property, as may be necessary, to ensure public safety or to preserve or enhance the symmetry and beauty of such public spaces.</u></p> <p>C. <u>Persons performing activities described in subsection (B) shall not be required to obtain a permit provided a written statement is filed with the Public Works Department confirming that they have reviewed and will follow applicable provisions of the city's adopted tree plan. Such statements shall be current within 12 months of the date work is to be performed.</u></p> <p>D. <u>City Manager may order the removal of any tree, or part thereof, irrespective of the adopted tree plan, upon a determination that such action is necessary to resolve an unsafe condition or prevent damage to public improvements.</u></p>	
<p>NMC CHAPTER 9.15 ENCROACHMENT PERMITS</p> <p>9.15.010 Permit Requirement</p> <p>A. The following actions are prohibited within rights-of-way or on city property except as authorized by the city by a temporary encroachment permit:</p> <ol style="list-style-type: none"> 1. Placing or maintaining a structure. 2. Excavation or fill, including placing of rocks or other landscaping 	<p>The proposed change removes a reference that an encroachment permit is required for planting trees in the public right-of-way.</p> <p>Issuance of an encroachment permit involves the preparation of a legal agreement between a property owner and City. They are targeted at structures, such as fences and retaining walls that often change the use of a portion of a right-of-way. An encroachment permit is an ill suited and cumbersome tool to apply to tree plantings and to staffs knowledge a permit has never been issued for that purpose.</p>

<p>materials.</p> <p>3. Planting a tree.</p> <p><u>4.3</u> Landscaping activities, other than in the portion of the right-of-way immediately adjacent to property owned, controlled or possessed by the person.</p> <p>B. Encroachment into improved right of way is only allowed if specifically authorized by the city pursuant to Chapter 9.10.</p> <p>C. The person in control of any encroachment of a structure in or over any right of way existing prior to the effective date of this chapter shall apply for an encroachment permit within 10 days of being requested to do so by the city. No action charging a violation of this section may be initiated for an encroachment existing prior to the effective date of this ordinance or while a timely filed application for an encroachment permit is under consideration by the city.</p> <p>D. This chapter does not apply to signs, which may be placed in rights of way only as authorized by a permit issued under Chapter 10.10.</p> <p>***</p>	
<p>9.15.020 Exemptions</p> <p>A. Certain encroachments are exempt from the encroachment permit requirement. Exempt encroachments are those which would have a minor impact on the present or planned use of the unimproved public right of way, easement or public property and those which are expressly permitted by ordinance. Exempt encroachments are:</p> <ol style="list-style-type: none"> 1. Mailboxes and their enclosing structures. 2. Guard/handrails along edges of driveway approaches, walks, stairs, etc. encroaching in unimproved public right of way. 	<p>This exemption is not needed. It implies that an encroachment permit would be required for plantings (including trees) that obstruct line of sight within public rights-of-way. That is not the case. Line of sight obstructions are addressed with separate regulations.</p>

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<p>3. Lawns and plants encroaching in unimproved public right-of-way that do not obstruct visibility for pedestrians, bicyclists and motorists, and that are placed or maintained by the owner or person in possession of the adjacent property.</p> <p>4. 1 Bicycle lockers and racks authorized in an approved parking district parking plan.</p> <p>5. 4 Work authorized by a right-of-way permit.</p>	
<p>NMC CHAPTER 13.05 SUBDIVISION AND PARTITION</p> <p>***</p> <p>13.05.015 Streets</p> <p>***</p> <p><u>M. Street Trees.</u> Trees may be installed within proposed or existing rights-of-ways provided the plantings conform to the city's adopted tree plan.</p>	<p>A cross reference has been added to the Subdivision Ordinance pointing out that street trees are subject to the city's adopted tree plan.</p>
<p>NZO SECTION 2-4-5. LANDSCAPING REQUIREMENT*</p> <p>***</p> <p>[Add new section 2-4-5.050. All subsequent subsections to be renumbered.]</p> <p><u>2-4-5.050. Tree Plantings.</u> Trees may be installed within rights-of-ways provided the plantings conform to the city's adopted tree plan.</p>	<p>A cross reference has been added to note that plantings within the right-of-way must adhere to the city's adopted tree plan.</p>
<p>VISION CLEARANCE REQUIREMENTS</p> <p>NMC 8.10 Nuisances</p> <p>***</p>	<p>The nuisance code is amended so that it is consistent with, and cross references to, the City's clear vision area requirements.</p>

8.10.060 Vegetation and Vision Obstructions

The following things, practices, or conditions on any property are nuisances. For purpose of this section, "property" includes any portion of a right-of-way adjacent to the property.

- A. Grass, thistles, cocklebur, weeds, or other noxious vegetation greater than eight inches in height or that are a fire hazard. The city shall have discretion to not enforce this section based on the totality of circumstances, including the type and location of the property, whether the property is appropriately left in a natural state, whether the property has even been cleared without appropriate measure to prevent invasive plant species, and other similar factors.
- B. Dead, decaying, or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property.
- C. Brush, bushes, shrubbery, tree limbs, or other growth that projects over a sidewalk at less than 8 feet above the sidewalk level, or that projects over a street at less than 13 feet above the street level.
- D. Any vegetation, wall, fence, or other vision-obstructing structure exceeding 36 inches in height measured from the roadway level that ~~obstructs a driver's view at an intersection or driveway access, the top of the curb, or where no curb exists, from the street centerline grade.~~ Vegetation, walls, fences, or structures obstructs vision if it is they are within 20 feet of a lot corner at the intersection or at the edge of a driveway and a clear vision area pursuant to Section 2-4-3 of the Newport Zoning Ordinance and, in the determination of the city manager, constitutes a safety hazard.

CHAPTER 9.25 INTERSECTION SAFETY

9.25.10 Purpose

~~The purpose of this chapter is to promote safety at intersections and drive~~

This chapter of the Municipal Code included clear vision area requirements that duplicate and conflict with standards contained in the Zoning Ordinance. It also conflicted with language above, in the nuisance code. Because the Zoning Ordinance includes administrative remedies, such as a variance or code interpretation, it is a more desirable

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<p>access points by reducing obstructions to clear vision at intersections.</p> <p>9.25.20 Definitions</p> <p>As used in this chapter:</p> <p>A. Fence means a barrier intended to prevent escape or intrusion or to mark a boundary. A fence may consist of wood, metal, masonry, or similar materials, or a hedge or other planting arranged to form a visual or physical barrier.</p> <p>B. Street means the entire width between right-of-way lines of every way for vehicular and pedestrian traffic and includes the terms "road," "highway," "lane," "place," "avenue," "alley," and other similar designations.</p> <p>C. Clear vision area means that area, as computed by Section 9.25.040, which allows the public using the city streets an unobstructed view of an intersection approach.</p> <p>D. Person means and includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, officer, or employee of any of them.</p> <p>E. Driveway or accessway means the point at which a motor vehicle gains ingress or egress to a property from a street.</p> <p>9.25.30 Requirements</p> <p>A. No person shall maintain, or allow to exist on property which they own or which is in their possession or control, trees, shrubs, hedges, or other vegetation or projecting overhanging limbs that obstruct the view necessary for safe operation of motor vehicles or otherwise cause danger to the public in the use of city streets. It shall be the duty of the person who owns, possesses, or controls the property to remove or trim, and keep</p>	<p>location to consolidate clear vision area standards. That is why this Chapter of the Municipal Code is proposed to be deleted.</p>
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<p>trimmed any obstructions to the view necessary for safe operation of motor vehicles.</p> <p>B. A clear vision area shall be maintained on the corners of all property adjacent to an intersection as provided by Section 9.25.040.</p> <p>C. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction, except for an occasional utility pole or tree, exceeding thirty inches in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees exceeding this height may be located in this area; provided, all branches and foliage are removed to the height of eight feet above the grade. Open wire fencing that does not obscure sight more than ten percent is allowed to a maximum height of six feet.</p> <p>D. Structures erected in compliance with zoning ordinance setbacks are exempt from this chapter.</p> <p>9.25.40 Computation</p> <p>A. The clear vision area for street intersections and driveway or accessway intersections shall be that area within a twenty-foot radius of the lot corner nearest the intersection, or within a twenty-foot radius of the intersection of the lot line and the edge of a driveway. Any building that meets the applicable setback requirement in effect at the time of construction is exempt from the clear vision requirement.</p> <p>B. Modification of this computation may be made by the city engineer after considering traffic engineering and safety principles, taking into consideration the location of the actual edge of the roadway, type of intersection, site characteristics, traffic controls, vehicle speed, traffic volumes, and other similar factors. Aesthetics and length of time fences or vegetation have existed are not relevant factors.</p> <p>9.25.50 Enforcement</p>	
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<p>Violation of this chapter is a civil infraction and a nuisance. Enforcement procedures shall be suspended while an application for a modification is being considered.</p> <p>9.25.60 Liability</p> <p>The person owning, in possession of, occupying or having control of any property within the city shall be liable to any person who is injured or otherwise suffers damage by reason of the failure to remove or trim obstructions and vegetation as required by Section 9.25.030. Furthermore, the person shall be liable to the city for any judgment or expense incurred or paid by the city, by reason of the person's failure to satisfy the obligations imposed by this chapter.</p>	
<p><u>NZO SECTION 2-4-3. VISION CLEARANCE CLEAR VISION AREAS REQUIREMENT</u></p> <p>2-4-3.005. <u>Front Yard Vision Clearance.</u> No fence or hedges of any kind shall exceed three and one-half feet in height in a required front yard or exceed three and one-half feet in height in a second front yard. On corner lots where the rear lines of the rear yards are contiguous, fences not over six feet in height, measured above the sidewalk grade, may be permitted on side streets not closer than 40 feet from the principal street. All trees growing or standing in the street right-of-way in the front or second front yard that overhang the sidewalk shall be trimmed to a height not less than eight feet above the sidewalk, and all trees that overhang the curb and street pavement shall be trimmed to a height of not less than 12 feet over such curb and street pavement. All trees and shrubbery shall be trimmed so as not to interfere with sight distance at intersections.</p> <p>2-4-3.010. <u>Vision Clearance for Corner Lots.</u></p> <p>A. <u>Establishment:</u></p> <p>A vision clearance area is hereby established for all zones and shall be maintained.</p>	<p>This Section of the Zoning Ordinance has been amended to incorporate elements of Chapter 9.25 of the Municipal Code. The method of measuring clear vision areas at street intersections has been changed to reference the curb line or edge of pavement as opposed to the property boundary. This is easier for people to understand and for staff to verify in the field. It also avoids the need for costly surveys.</p> <p>Proposed language borrows elements from codes adopted by the cities of Newberg and Eugene (attached).</p>

B. Definition:

~~A vision clearance area for corner lots shall consist of a triangular area on a lot at the intersection of two streets or a street and a railroad, two sides of which are lot lines to a distance specified in these regulations. The third side of the triangle is a line across the corner of the lot joining the non-intersecting ends of the other two sides. Where the lot lines at intersections have rounded corners, the lot lines will be extended in a straight line to the point of intersection. The vision clearance area contains no plantings, walls, structures, or temporary or permanent obstructions exceeding three and one-half (3 1/2) feet in height measured from the top of the curb.~~

C. Measurement of Vision Clearance for Corner Lots:

~~The following measurement shall establish clear vision areas:~~

<u>Measurement</u>		
<u>Right-of-way Width</u>	<u>Street Width</u>	<u>Each Lot Line</u>
60 feet	36 feet	30-foot Residential Only
50 feet	26 feet	40-foot Residential Only
50 feet	28 feet	20-foot Residential Only
Less than 50 feet	28 feet or Less	20-foot Residential and Commercial

~~2-4-3.015. Obstruction of Front Yards by Certain Vehicles Prohibited. No boat, trailer, travel trailer, mobile trailer, truck, automobile, or other vehicle may be stored or parked in the required front yards for longer than seven consecutive days.~~

~~2-4-3.005. Purpose. The purpose of this section is to promote safety at intersections and drive access points by reducing obstructions to clear vision at intersections.~~

~~2-4-3.010. Clear Vision Area Defined. A vision clearance area includes the following:~~

~~A. At the intersection of two streets, a triangle formed by the intersection of the curb lines, with each leg of the vision clearance triangle being a~~

minimum of 35 feet in length. Where curbs are absent the edge of the asphalt or future curb location shall be used as a guide. The City Engineer may modify this requirement, in writing, upon finding that more or less distance is required (i.e. due to traffic speeds, roadway alignment, etc.).

- B. A portion of a lot subject to a front yard setback as defined in Section 2-3-2. A clear vision area does not include that portion of a second front yard outside of the area described in subsection (A).

2-4-3.015. Clear Vision Area Requirements. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction, except for an occasional utility pole or tree, exceeding three feet in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees located within a clear vision area shall have their branches and foliage removed to the height of eight feet above the grade.

2-4-3.020. Maintenance of Clear Vision Areas. It shall be the duty of the person who owns, possesses, or controls real property or right-of-way adjacent thereto, to maintain a clear vision area in the manner provided in this section.

2-4-3.025. Exemptions for Buildings. A building erected in compliance with zoning ordinance setbacks is exempt from this section.

2-4-3.030. Liability. The person owning, in possession of, occupying or having control of any property within the city shall be liable to any person who is injured or otherwise suffers damage by reason of the failure to remove or trim obstructions and vegetation as required by this Section. Furthermore, the person shall be liable to the city for any judgment or expense incurred or paid by the city, by reason of the person's failure to satisfy the obligations imposed by this Section.

2-4-3.035. Variances. The requirements of this section shall be subject to the processes and criteria contained in Section 2-5-2, Adjustments and Variances.

MINUTES
City of Newport
Planning Commission Work Session
City Hall Conference Room "A"
Monday, November 14, 2011

Planning Commissioners Present: Jim Patrick, Glen Small, Gary East, Melanie Sarazin, and Jim McIntyre.

Planning Commissioners Absent: Rod Croteau and Mark Fisher (excused).

Citizens Advisory Committee Members Present: Dustin Capri and Bill Branigan.

Citizens Advisory Committee Members Absent: Lisa Mulcahy.

Vacation Rental Ad Hoc Work Group Members Present: Rob Oberbillig, Bill Berman, and Lee Hardy.

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

Chair Patrick called the Planning Commission work session to order at 6:00 p.m. He reversed the order of the agenda and turned the meeting over to CDD Tokos.

A. Unfinished Business.

1. Review recommended revisions to the Vacation Rental Code from the AD Hoc Work Group. Tokos noted that included in the packets was a matrix which includes in the left column changes that the ad hoc group recommends be made to the draft that we have been working on. The right side includes the rationale. He also included a copy of the PowerPoint the ad hoc group used as a point of reference. Tokos noted that a few of the members of the ad hoc group were in attendance to answer any questions.

Tokos went through the draft code section by section. Beginning with "General Provisions", he noted this is where it explains that it is an endorsement as opposed to a license. For the endorsement there is a set of additional standards to meet, but there are not multiple licenses; it is all under one business license. Tokos said that endorsements aren't new; the City already does endorsements for vending on public property. The other aspects on page 2 have to do with the issue that came up in the open house – the desire to grandfather and have the rights run with the land. He said that the concern is that subsequent owners lose track and don't understand the rules. Having the endorsement specific to the owner ensures that subsequent buyers will know what the rules are they have to follow. An existing vacation rental or B&B can lose prior approval if they don't come in within the 120 days to get an endorsement. Tokos said we can get that outreach to those folks. Approval can also be voided if a business license lapses for 12 consecutive months. This also clarifies that a conditional use permit option is available. If they try to get an endorsement and get denied because they can't meet all the standards, there is the option of seeking a conditional use review. If that is approved by the Planning Commission, they can be granted relief from standards (one or more). It doesn't substitute having an endorsement. Tokos gave an example that an owner may have a small piece of property and can't provide off-street parking; but they believe there is ample on-street parking for their use. They can go through the conditional use review where the Planning Commission looks at it. If the Commission decides that is okay, then they don't have to meet that particular endorsement standard. They still have to obtain an endorsement because there are other standards they have to meet. Patrick asked if they basically get a conditional use permit first and then an endorsement; and Tokos confirmed that.

The next section, "Approval Authority" clarifies who is responsible for what. It makes it clear that the CDD can't issue an endorsement if the standards are not met.

For the "Application Submittal Requirements" section, no significant changes were made.

Under the "Standards for Vacation Rental Endorsement" section, Tokos made a change on the Maximum Building Occupancy subsection. At the open house the concern was that the 200 square feet gross floor area was too limiting for a single-family home, and smaller homes wouldn't be able to be rented for holidays. Tokos said this is the Uniform Fire Code, which is a standard the City already adopted and already applies. The question is whether to call it out so people are aware of it. It was the group consensus to at least call it out. Patrick noted that we will also have problems with regular rentals in that code. Tokos said the Fire Department says it is something they will deal with on a case by case basis; maybe from a complaint of a large party or something. Tokos noted that typically it is not practical to retrofit a single-family residence into a commercial structure. Hotels are under the commercial code and have better egress, are sprinkled, and have exit signage. Tokos said that the most significant change here has to do with the recommendation from the ad hoc group that prohibits the use of on-street

parking spaces for overnight guests. There was some feedback at the open house from that. That is difficult to enforce and they should be able to take advantage of those spaces just the same as anybody else. When they come in for an endorsement, we confirm that the off-street spaces are there, and that should be enough. McIntyre asked about a long driveway where cars are parked right behind one another. He wondered if it wouldn't be a violation if there were six cars in the driveway, and four couldn't access the street because two cars are parked behind and have them blocked in. Tokos said that if the spaces are not accessible to a guest, if it's blocked by other vehicles or spaces or are used for storage of a boat or something, the intent was that would be a violation. Under the Waste Management subsection, the group recognized that the dumpster prohibition was in there because it's not typical in a single-family residential area. It is common in multi-family and commercial zones. It would be too difficult to ferret that out. The group's recommendation is to strike the prohibition on dumpsters. Berman asked about handicap parking spaces, and Tokos noted that our parking code has language about when handicap parking needs to be available. Tokos noted that the Landscaping subsection, clarifies that the percentages are applicable in residential zones. Capri asked about small lots having 50% of the front yard in landscaping and still having off-street parking spaces available. Tokos noted that in those cases, the conditional use process is available. For the Guest Registry subsection, the group agreed that it was appropriate and wasn't overly intrusive. Hotels and motels do it already. It is necessary information in case of a catastrophe and for complaints. The change syncs up with what hotels are doing: obtain information on the primary occupant, the number of guests, and the vehicle license. The group felt that there needed to be just a few minor changes to the Contact Information subsection. They felt that the in-person response isn't always necessary or appropriate and they don't always have to have possession of a key. For the Emergency Provisions subsection, we received comments at the open house that we should get specific; and the group agreed. The items are listed, and there is still the catch-all that the City Council can adjust this if changes to the requirements come along. There were no significant changes to the Postings subsection; just some clarifications to language.

Regarding the "Inspections" section, comments were received at the open house that when existing approved vacation rentals come in for their initial endorsement within the 120-day period, upon inspection if something is found, it would be unreasonable to make them shut down. They should be given time to make changes. The group agreed that was appropriate. The building official has discretion on this. For units never before used as vacation rentals, they have to do corrections before they can start renting.

There were no changes to the "Notice Requirements" section.

The "Complaints" section had no significant changes.

No significant changes were made to the "Violations" section.

The "Penalties" section contained some minor clarification language. There are different penalties for land use actions, like conditional use permits, than for endorsements. Small wondered what the penalty was for failing to even get an endorsement. Tokos explained that is a straight violation of the zoning ordinance, which contains separate penalties for violations of the zoning ordinance. He said it's a fine from the City Manager. It's not cross-referenced here because we don't cross-reference for other types of permits.

The "Definitions" section has quite a bit of work done to it. It explains the difference between hotels, motels, B&Bs, and vacation rentals. In looking at the Oregon Structural Specialty Code to try to classify these, that code specifies that a lodging house can have no more than 5 bedrooms and not get into the commercial code. We used the building code to sync up with our definitions. Branigan asked what counts as a guest room under a vacation rental. Tokos said that we will be looking for them to identify that when they come in for their endorsement. Typically it's bedrooms. The difference between B&Bs and vacation rentals is that B&Bs would be providing meals. We just added language that B&Bs and vacation rentals are not hotels or motels. It was noted that we have a business that has a motel and also vacation rentals. This type of classification helps distinguish between the two. Tokos said a difference between hotels and motels is that hotel units don't open directly outdoors. He didn't propose to make further changes to those definitions. Berman asked why not just say bedrooms rather than guest rooms because for occupancy we say no more than two persons per bedroom. Tokos said that guest room matches up with what is in the building code so it's probably safest to leave it. Branigan wondered if two people per bedroom also counted babies. Patrick said it is called out by person. Tokos noted that the ad hoc group spent a fair amount of time looking at other codes, and it is all over the board. That seemed to be a reasonable threshold, and there was no feedback on that at the open house. The concern was on the maximum occupancy. Oberbillig asked about the 30 people per dining room regulation, and Tokos said that is in the fire code. From their perspective that is a problem.

Tokos noted that the last section is the "Zoning Districts", which lists the uses in the various zones. There was just terminology clarification there. There was feedback at the open house about potentially limiting B&Bs in the R-1 and R-2 zones or both B&Bs and vacation rentals. There was talk about tenancy limits. The ad hoc group looked at that, and it was discussed with the Planning Commission. There are some practical issues in trying to enforce that. There was some debate that there are people coming and going normally in a residential environment so why be concerned about tenancy limits. It was

determined that it is not worth going down that path. Tokos noted that there are no changes in the R-1 and R-2 zones. But, he said that the Commission can certainly propose to restrict B&Bs in R-1 and R-2 if they want. Vacation rentals are currently allowed in R-1 and R-2; so if the Commission wants to restrict them in those zones, we would have to send out a Measure 56 notice. The ad hoc group looked at what other jurisdictions do to limit vacation rentals, and nothing made sense. Our residential zones are not set up that way; they were put together for other reasons. Some jurisdictions don't even allow them in residential zones at all. Others, like Durango, have spacing limits. None of them had a clear rationale for what this achieves. The question is what would be the magic number. The ad hoc group felt that marketing will decide if a location makes sense or not. They thought it should be okay as long as we put in appropriate standards so it won't turn into something that isn't consistent with a residential area. Branigan asked if the 10 times goes away, and Tokos said that wasn't workable anyway; there was no way to hold them to the 10 occupancies.

Everyone agreed that these changes seem reasonable. Tokos asked if this is ready to go to public hearing. Patrick suggested taking it to public hearing to see where the rubbing points are. East thought this was at a great point for public discussion, and we can adjust it from there. Patrick said to make it clear what the City would have to go through if we back up and put more restrictions on the residential zones where vacation rentals will be allowed. Branigan wondered how this syncs with what Lincoln City is doing. Tokos said he hasn't been tracking what changes Lincoln City is proposing right now, but their code was one that was evaluated. Some elements are here. They are similar in landscaping, and we haven't had any push back on that. The open house notice was sent to everybody in the City, and we only had about 14 people or so show up. Tokos said the hope is that at the Council level we can present this the same time as the changes to the business license codes. He said that just makes sense. It should be February for the City Council. We can get this set up for a January public hearing before the Planning Commission. We are not planning on doing another mass mailing but will send out notice to those that expressed interest or gave contact information at the open house. Sarazin said that press releases would be sufficient.

2. Review draft ordinance for Tree City USA designation. Materials for this discussion were handed out. Tokos noted that there are a lot of changes to look at in the Tree City ordinance. He said this is just the initial draft. This is one of the City Council priorities, and some of the Councilors felt very strongly about this. They are comfortable with doing the minimum necessary to obtain Tree City USA designation because some of those things we should have been doing already. Minimalistic is how Tokos structured the code with basic standards so that our infrastructure is not being torn apart. The burden is put on a Parks and Recreation committee. Tokos has talked to Parks and Recreation Director Jim Protiva, and he is in agreement. The code creates a City Tree Board, which will meet to put together a Tree Plan that includes guidelines for how the urban tree canopy is to be maintained. There will be specific regulations for trees in public rights-of-way. There will be restrictions on types of trees under utility lines and close to curbs so that we are not finding that we are having to replace sidewalks or underground water and sewer lines or that PUD is having to trim trees. Tokos said this is looking at a longer-term vision here; 30-40 years down the road. Sarazin asked if this had been reviewed by PUD. Tokos thought that was a good point and that it should be. Tokos said there is a requirement that the Plan be reviewed every three years, and that the initial plan has to be approved by the City Council. Tokos noted that acceptable street trees later plug in under "Permitting". The Board can put in a Heritage Tree program if they want, which means they can identify certain trees that would be preserved in the community. Sarazin asked if there are any benefits to the City of being designated a Tree City. Tokos said primarily it is good PR, and there is a theory that it is advantageous for grants. Sarazin noted that this was really low on the Planning Commission's priority list. Tokos said this landed on the Council goals. Patrick said that this comes from the Midwest where it is hard to grow trees. Here we don't have that issue. Tokos said that we can look at this from the side that some of this we should be doing already. We don't want to let people plant willy-nilly in the right-of-way. Patrick asked about people chopping trees down in the rights-of-way, and Tokos said this will help with that too. Capri asked if this prevents planting a strip, and Tokos said no. Tokos said the more common example will be trees in unimproved rights-of-way. If the wrong kinds are planted, they will tear up infrastructure. It didn't specify native trees. He gave an example of Cypress trees in this community, which are not native trees. He said he wouldn't be surprised if the Board picked off something like that, even though they are not native. The Parks and Recreation committee will set up guidelines. The Heritage Trees piece is optional. The code applies to trees in the rights-of-way, but there is no limit for Heritage Trees. East asked if for master planned communities, if there are any landscaping standards already set up for those areas that can be transferred over. Tokos said not really. He added that there is a lot of benefit to encouraging street trees. If the Commission feels it needs to be put in the subdivision ordinance, we can. Tokos said on page two, it talks about right-of-way permits. The City already has a right-of-way permit; but this has been construed to apply to tree removal. He said that Public Works is on board with this. The permit will just have to be retrofitted for this permitting process. There is no cost for right-of-way permits now. There will have to be outreach here so the public is aware that if they plant in the rights-of-way, they have to get a permit. He thinks this can be done in a tactful way. The code is expanded to get to other City properties; so it applies to parks. Tokos said there is clarification in here that when installing trees along the street, you have to meet standards set out here. Patrick noted that around here we get so many volunteer trees, that you can literally mow trees down. He thought there should be a size specified. Tokos said we could use 8", which is consistent with what we did in the geologic hazards code. He will add that. Tokos explained that only those trees listed as "small" in the Tree Plan can be under utility lines. Trees should be set back a certain distance from curbs and sidewalks. He said this borrows from the Coos Bay and Seaside codes. The code gives guidelines for planting trees within a right-of-way that is underdeveloped. The 35 feet on street corners gets into site vision. The clause that the City has the right to maintain trees

for safety or beauty applies to street trees and parks. Public Works or Parks typically handle the safety issues with trees. They have to adhere to the adopted Tree Plan; however, they don't have to get permits. They just file a statement that they have read the Tree Plan. Tokos said the group will pick this up again at the next meeting.

C. **Adjournment.** Having no further time, the work session meeting adjourned at 7:00 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

Derrick Tokos

From: Derrick Tokos
Sent: Wednesday, December 21, 2011 2:27 PM
To: 'RAMSTAD Kristin'
Cc: Jim Protiva
Subject: RE: Newport Tree City USA Ordinance Draft

Kristin,

Thanks for providing comments. I'll clarify the draft ordinance to make it clear that the Tree Board is responsible for addressing the proclamation and celebration requirement. That is what I meant by saying it is responsible for obtaining the annual Tree City USA designation.

As to the issue of interim standards, I think the tact we would prefer to take is to make all or a portion of the ordinance operable at such time as a tree plan is adopted by the City Council. I understand that it will take time for the tree plan to be developed, and the City will need to undertake public outreach so folks understand the rules. Our objective is to get ready for the next Tree City application cycle. That should be around next December, right?

I'll take a look at the encroachment language, with your concerns in mind, and see if it can't be clarified.

Thanks again,

Derrick I. Tokos, AICP
Community Development Director
City of Newport
ph: 541-574-0626
fax: 541-574-0644
d.tokos@NewportOregon.gov

From: RAMSTAD Kristin [mailto:kristin.ramstad@state.or.us]
Sent: Thursday, December 15, 2011 3:04 PM
To: Derrick Tokos
Cc: Jim Protiva
Subject: RE: Newport Tree City USA Ordinance Draft

Hi Derrick,

I am just back in my office after being out earlier this week.

So far so good on your revisions I think. Here are a couple of thoughts:

(1) Many cities consider their Tree Boards or committees as advisory bodies that have specific purposes (such as developing a tree care plan) and handle things like tree complaints, but they ALSO are tasked with organizing and implementing the city's Arbor Day celebration(s). This is a way to address the required Arbor Day proclamation and

celebration requirement of Tree City. I suggest consideration of tasking Newport's tree committee with this purpose along with the others you mention.

(2) It usually takes a while for a committee, even a long-standing one, to come up with a workable tree plan and tree list. In the meantime, you may want to add something to your ordinance that requires that public tree care be done to a national standard, both by city employees and contractors. By hitching your city's tree care standards to a national standard, the tree care standard in your city will keep pace to the nationally recognized best practices for tree care and hold all people performing tree care to the same expectation. The two primary standards used in the tree care industry are: the ANSI A300 (for tree, shrub and other wood plant maintenance) and the ANSI Z133.1 (for arboricultural safety procedures). The PNW International Society of Arboriculture also publishes ANSI standard companion Best Management Practices booklets, to further explain and clarify the standards. If, when your tree committee gets down to work you, as a city, decides that it wants to create its own tree care standards, that's fine. In the meantime however, you have excellent practices referred to in your code. [Having said all this however, be aware that you may need to provide exemptions for utility tree workers, who may not be able – initially! -- to prune all the ROW trees near power lines to the ANSI A300 standards.]

(3) In your code language about encroachment, it is not clear to me that it addresses both overhead (e.g. tree limbs and sign clearance) and below-ground (roots that grow into private property or FROM private property to public ROW) issues.

I'll do another reread tomorrow afternoon and see if anything else pops out at me....

Cheers,
Kristin

Kristin Ramstad

Community Assistance Forester

p: 503-945-7390

f: 503-945-7416

You may call me toll-free: 1-800-437-4490 and ask the receptionist to transfer your call.

Please consider the environment before printing this message.

From: Derrick Tokos [<mailto:D.Tokos@NewportOregon.gov>]

Sent: Tuesday, December 13, 2011 3:27 PM

To: RAMSTAD Kristin

Cc: Jim Protiva

Subject: Newport Tree City USA Ordinance Draft

Hi Kristin,

I am working with Jim Protiva, our Parks Director, and the Newport City Council on positioning the City for making an application to the Arbor Day Foundation for a "Tree City USA" designation. To that end, I have put together a package of code amendments to serve as the City's Tree ordinance (attached). It designates the City's Parks and Recreation Committee to serve as a "Tree Board," charged with developing a plan for the care and maintenance of trees within road rights-of-way and on city property. They would also have the option of putting together a heritage tree program. Day-to-day implementation would be handled by our Public Works Department using an existing right-of-way permitting process.

The proposed amendments have been reviewed by the Newport Planning Commission. This draft incorporates their comments. The Newport Parks and Recreation Committee will review it at their December 21, 2011 meeting. I am hoping that you can take a look at the proposal and provide comments in advance of that meeting.

Let me know if you need more time. The City Council will hold a work session on the changes in January and an initial hearing before the Planning Commission won't happen until later that month, so there will be ample opportunities for you to plug into the process.

I appreciate any assistance you can provide.

Derrick I. Tokos, AICP

Community Development Director

City of Newport

ph: 541-574-0626

fax: 541-574-0644

d.tokos@NewportOregon.gov

City of Newport
Parks and Recreation Committee Meeting
December 21th, 2011
MINUTES

1. Call to Order. The meeting was called to order by Ed Simon at 8:35 a.m.
2. Roll Call. Members present were Ed Simon, Nancy Steinberg, Susan Boehlert, Jimmy Rodriquez, Karen Smith, Sandra Surber and Sandy Roumagoux, City Council liaison. Absent: Roger Holstein.

Staff Present: Parks and Recreation Director, Jim Protiva and Derrick Tokos, Community Development Director.
3. Approval of Minutes. Nancy moved to approve the minutes of the November 16th, 2011 meeting. Seconded by Susan. Hearing no objections, the minutes were approved.
4. Concerns or Comments from Citizens. None.
5. Report of the Director. Jim noted that our basketball league sign-ups are at a record high. An analysis of recent financial history shows that our revenues are increasing while our expenditures are decreasing; at the same time there is still discussion that we need to continue that trend. Jim added that he was developing a policy for cost recovery and staff would be working on it in the next few months, noting that our current cost recovery is 57%. Ed Simon stated that through their research with the Task Force, it was found that Newport Parks & Recreation had one of the lowest subsidies around. Jim said that he would be bringing more information on this topic to the Committee in the near future. Jim advised the Committee that the air-handlers at the pool had been changed out as there was a fear they might fall through the roof. Repairs to both had been made. Also, there was recently a swim meet at the pool and evening drop-in usage is getting good numbers. Jim noted that he had visited the NOAA offices on Friday and had coffee with several of the staff there, informing them of some of the services that our Department offers. The Senior Center recently had a silent auction and made over \$1000.00.
6. New Business. Jim passed out information regarding the purpose and functions of the Parks and Recreation Committee and noted that the City Council had set a goal to become a "Tree City USA" and one of the requirements was the need for a "Tree Board." Derrick noted that besides a Tree Board, there was also a need for a tree care ordinance for care of trees in public places, plus a budget for tree care (\$2 per capita,) and at least one Arbor Day event and/or proclamation annually. The Council is generally supportive of moving forward with taking basic steps towards getting the designation. Several coastal and valley towns were looked at to see what their approaches have been. Derrick went through the issues the Committee would need to address as the Tree Board. Nancy moved and Karen seconded to endorse the concept of the City of Newport working toward becoming a Tree

City USA, with the Parks and Recreation Committee serving as the Tree Board. There were no objections and the motion passed.

Ed Simon noted two issues the Task Force would like the Committee to address; first, regarding the amendment of the City Ordinances to allow for a person outside of the City limits to serve on the Parks and Rec. Committee and second, having two students from the high school to serve on the Committee. Ed also mentioned that with the addition of a couple of more members, the Committee could sub-divide into sub-groups that could work with the Pool, Rec. Center, or Parks, which would remove some of the burden off the Director. Jim noted that this was an opportunity for the Committee to take a more active role in assisting the Department. The Committee also discussed the expansion of partnerships and the development of wellness programs within local businesses and the formation of a foundation to support the Parks and Recreation department.

7. Old Business. Jim asked the Committee to consider and discuss the long-term future of the pool. Jim referenced an article in the paper about FOCA (Friends of Coastal Aquatic Park) and their desire to build a water park in South Beach, noting that such a facility would impact our municipal pool.

Jim presented the latest version of the Park Rules that had been reviewed by the City Attorney, which would now go before the City Council.

8. Other. Ed asked that the Committee bring their ideas for partnerships and sub-committees to the next meeting and e-mail them to Jim beforehand.

9. Adjournment. The meeting was adjourned at 10:05 a.m.

The next meeting is scheduled for January 18th, 2012

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

The Newport Planning Commission will hold a public hearing on Monday, January 23, 2012, at 7:00 p.m. in the City Hall Council Chambers to consider amendments to the Newport Municipal Code and Newport Zoning Ordinance that put in place a program for managing the city's urban tree canopy. If adopted, the amendments will support a City application for a "Tree City USA" designation with the Arbor Day Foundation. The Commission will make a recommendation to the Newport City Council. A public hearing before the City Council will be held at a later date, and notice of the City Council hearing will also be provided. Specifically, the proposal amends the following code sections: Amend NMC 2.05.040 (Park and Recreation Committee) to authorize the committee to serve as the City's tree board; amend NMC 9.10 (Right-of-Way Permits) to establish standards for planting and maintaining trees within public rights-of-way; amend NZO 2-4-5 (Landscaping Requirements) to cross-reference to the approved planting list and permit requirements of NMC 9.10 for trees and shrubs that are proposed within the public right-of-way; amend NMC 13.05.015 (Streets) to include a subsection requiring that street trees proposed within a subdivision or partition adhere to the approved list and placement standards of NMC 9.10; and amend NZO 2-4-3 (Vision Clearance Requirements) and NMC Chapter 9.25 (Intersection Safety) to clarify the standards and eliminate redundancy. 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 Planning Commission. 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).

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