



Medford City Council Meeting

Agenda

May 4, 2017

12:00 Noon

Medford City Hall, Council Chambers
411 West 8th Street, Medford, Oregon

10. Roll Call

Introduction of McLoughlin Middle School Students of the Month

20. Approval or Correction of the Minutes of the April 20, 2017 Regular Meeting

30. Oral Requests and Communications from the Audience

Comments will be limited to 4 minutes per individual, group or organization. PLEASE SIGN IN.

40. Consent Calendar

40.1 COUNCIL BILL 2017-40 SECOND READING – An ordinance replacing section 5.256 of the Medford Municipal Code to allow exclusion notices to be issued to individuals within a designated downtown district.

40.2 COUNCIL BILL 2017-42 SECOND READING – An ordinance repealing sections 5.511 through 5.518 and adding sections 7.960, 7.962, 7.964, 7.966, 7.968, 7.970, 7.972, 7.974, 7.976, 7.978 of the Medford Municipal Code pertaining to chronic nuisance property.

50. Items Removed from Consent Calendar

60. Ordinances and Resolutions

60.1 COUNCIL BILL 2017-45 An ordinance authorizing execution of a contract with the Medford Senior Center, a 501(c)(3) non-profit corporation, to provide services and management of the Medford Senior Center beginning July 1, 2017.

70. Council Business

80. City Manager and Other Staff Reports

80.1 ONESolution update by Alison Chan

80.2 Further reports from City Manager

90. Propositions and Remarks from the Mayor and Councilmembers

90.1 Proclamations issued:

Small Business Week – April 30 – May 6, 2017

Municipal Clerks Week – May 7 – 13, 2017

Peace Officers Memorial Day – May 15, 2017

Building Safety Month – May 2017

National Preservation Month – May 2017

90.2 Further Council committee reports

90.3 Further remarks from Mayor and Councilmembers

100. Adjournment

The evening meeting has been cancelled as there are no items for Council consideration.



CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 40.1

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DEPARTMENT:	Legal	AGENDA SECTION:	Ordinances and Resolutions
PHONE:	(541) 774-2020	MEETING DATE:	May 4, 2017
STAFF CONTACT:	Lori Cooper/Kevin McConnell, City Attorney's Office Deputy Chief Scott Clausen/Cpl. Tom Venables, MPD		

COUNCIL BILL 2017-40 – SECOND READING

An ordinance replacing section 5.256 of the Medford Municipal Code to allow exclusion notices to be issued to individuals within a designated downtown district.

SUMMARY AND BACKGROUND

In 2011, the City Council approved an ordinance adding section 5.256 to the Medford Code, which provided for exclusion notices to be issued to individuals after being warned to not engage in prohibited conduct on city property. This ordinance has been updated and expanded to: 1) apply to a designated downtown district as well as on any city property; 2) alter the length of exclusion period and methodology; 3) allow for a variance to an otherwise valid exclusion notice; 4) include the City's marijuana-related offenses and failure to control dangerous dog offense to list of offenses subject to exclusion ordinance; and 5) deleted the warning requirement before issuance of an exclusion notice.

PREVIOUS COUNCIL ACTIONS

City Council adopted Ordinance 2011-217 on November 3, 2011.
Council directed staff to draft an updated exclusion ordinance on March 2, 2017.
First Reading and Council vote was on April 20, 2017.

ANALYSIS

Most notably, the amendment will provide for two exclusion zones. Currently section 5.256 allows exclusion notices to be issued to individuals who engage in illegal conduct on City property, and the individual is excluded from the specific property the person receives a notice of exclusion for. This amendment will add a Downtown District exclusion zone (See attached Downtown District Civil Exclusion Zone Map). If an individual is issued an exclusion notice in the downtown district, they are excluded from the entire district. An individual found in either civil exclusion zone after being issued an exclusion notice may be cited and/or arrested for the crime of Trespass-Premises (Medford Code section 5.250).

In addition, this amendment also:

- 1) Sets the exclusion length period to 90 days. The current ordinance allows for a tiered exclusion period (30/90/180 days), based upon the number of exclusion notices previously issued. The Medford Police Department (MPD) and the court found this system overly complicated and unduly burdensome. As an excluded person can be arrested for trespass-premises any time they are seen in an excluded zone for three months (police contact is a significant deterrent), the current tiered exclusion period is unnecessary;
- 2) Deletes the requirement for a warning before issuance of an exclusion notice. Currently, an individual that violates *any law* (city or state violation, misdemeanor or felony) on city property is subject to the ordinance. The ordinance states that the officer must give a warning to the person to cease the unlawful activity. If they comply, no notice of exclusion is issued. However, the exceptions to the warning requirement swallowed the rule. The amended ordinance lists the offenses that can subject an individual to a notice of exclusion. Staff has included various crimes against persons and other offenses that erode the quality of life in the civil exclusion zones; and
- 3) Allows the municipal court to issue variances. Currently, if the City has met its burden, the Court upholds the exclusion. The ordinance only allows the Court to shorten the length of exclusion per its



CITY OF MEDFORD
AGENDA ITEM COMMENTARY

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discretion. The amendment adds to this by allowing the Court to issue a variance if the scope of the exclusion is unreasonable under the circumstances.

As with the existing code, prohibited camping is not a basis for exclusion under the proposed amendment. At the April 20 meeting, Council approved amendments to the ordinance adding language which 1) explicitly states that prohibited camping is not a basis for exclusion, and 2) provides that being within the exclusion zone to obtain social, medical, or employment services or to attend public meetings or court proceedings is not a violation of the exclusion order.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

None.

TIMING ISSUES

None.

COUNCIL OPTIONS

Approve, modify, or deny the ordinance.

STAFF RECOMMENDATION

Staff recommends approval of the ordinance.

SUGGESTED MOTION

I move to approve the adoption of the Civil Exclusion ordinance.

EXHIBITS

Ordinance

Map

ORDINANCE NO. 2017-40

AN ORDINANCE replacing section 5.256 of the Medford Municipal Code to allow exclusion notices to be issued to individuals within a designated downtown district.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

SECTION 1. Section 5.256 of the Medford Code is added to read as follows:

5.256 Exclusion from City Property Civil Exclusion.

~~(1) Exclusion. In addition to other remedies provided for violation of this Code, a person in charge of city property may exclude any person who violates an applicable provision of law on a city property from the city property in accordance with the provisions of this section. Nothing in this section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the Oregon or federal constitution. However, a person engaged in such protected activity who commits acts that are not protected shall be subject to exclusion as provided by this section.~~

~~(2) Definitions. The following terms as used in this section shall mean:~~

~~(a) City Property. Any property owned or managed by the City, including but not limited to parks, greenways, buildings, parking lots or other land or physical structures.~~

~~(b) Person in Charge of City Property. The City Manager or designee; the City of Medford Parks & Recreation Director or designee; or a Peace Officer as defined in Medford Code Section 1.010(18).~~

~~(c) Applicable Provision of Law. Includes any City ordinance; any rule or regulation promulgated by the Parks and Recreation Department; any offense or traffic offense of the State of Oregon; and any law regarding controlled substances or alcoholic beverages. A person in violation of section 5.257 (Prohibited Camping) shall not be subject to the provisions of this section.~~

~~(3) Length of Exclusion. Exclusions under this section shall be administered as follows:~~

~~(a) If the person to be excluded has not previously been excluded from the city property, the exclusion shall be for 30 days.~~

~~(b) If the person to be excluded has been excluded at any time from the city property within two years before the date of the present exclusion, the exclusion shall be for 90 days.~~

~~(c) If the person to be excluded has been excluded from the city property on two or more occasions within two years before the date of the present exclusion, the exclusion shall be for 180 days.~~

~~(d) A person shall only be excluded from the city property that the person receives a notice of exclusion for.~~

~~(e) If the person to be excluded has previously been excluded from a different city property, the previous exclusion shall not be counted in determining the length of exclusion.~~

~~(4) Exclusion Warning. Before issuing an exclusion under this section, a person in charge of city property shall first give the person a warning and a reasonable opportunity to desist from the violation. An exclusion shall not be issued if the person promptly complies and desists from the violation. Notwithstanding the provisions of this subsection, no warning shall be required if the person is to be excluded for engaging in conduct that:~~

~~(a) Is classified as an offense under the following chapters of the Oregon Revised Statutes, or is~~

an attempt, solicitation or conspiracy to commit any such offense as defined in ORS:

- ~~(i) Chapter 162 Offenses Against the State and Public Justice;~~
- ~~(ii) Chapter 163 Offenses Against Persons;~~
- ~~(iii) Chapter 164 Offenses Against Property, except for ORS 164.805 (Offensive Littering);~~
- ~~(iv) Chapter 165 Offenses Involving Fraud or Deception;~~
- ~~(v) Chapter 166 Offenses Against Public Order; Firearms and Other Weapons; Racketeering;~~
- ~~(vi) Chapter 167 Offenses Against Public Health, Decency and Animals;~~
- ~~(vii) Chapter 475 Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors; or~~
- ~~(b) Otherwise involves a controlled substance or alcoholic beverage; or~~
- ~~(c) Has resulted in injury to any person or damage to any property; or~~
- ~~(d) Constitutes a violation of any of the following provisions of the Code:~~
 - ~~(i) Section 5.105 Assault;~~
 - ~~(ii) Section 5.110 Menacing;~~
 - ~~(iii) Section 5.115 Recklessly Endangering a Person;~~
 - ~~(iv) Section 5.120 Disorderly Conduct;~~
 - ~~(v) Section 5.125 Public Urination, except if the conduct involves only urination on a permeable surface in a city park or greenway;~~
 - ~~(vi) Section 5.130 Harassment;~~
 - ~~(vii) Section 5.152 Carrying Concealed Weapon;~~
 - ~~(viii) Section 5.154 Unlawful Possession of Firearm;~~
 - ~~(ix) Section 5.160 Discharge of Weapons;~~
 - ~~(x) Section 5.260 Defacing Streets or Sidewalks, except if the person is able to summarily remove the defacement or marking to the satisfaction of the Person in Charge of City Property;~~
 - ~~(xi) Section 5.270 Mischief;~~
 - ~~(xii) Sections 5.292, 5.294 and 5.298 Theft Ordinances;~~
 - ~~(xiii) Section 5.305 Inhaling Toxic Vapors;~~
 - ~~(xiv) Section 5.310 Drinking in Public~~
 - ~~(xv) Section 5.315 Possession of a Controlled Substance;~~
 - ~~(xvi) Section 5.341 Prohibition of Unaccompanied or Unemancipated Minors from Being in Public Places During Certain Hours; or~~
- ~~(e) Is conduct for which the person previously has been warned or excluded for committing on city property.~~
- ~~(5) Notice of Exclusion. Written notice shall be given to any person excluded from a city property under this section. The notice shall specify the date, length and specific place of exclusion, shall identify the provision of law the person has violated and shall contain a description of the offending conduct. The notice shall inform the excluded person of the right to appeal, including the time limit and place of delivering the appeal. The notice shall be signed by the person in charge of city property. Warnings of consequences for failure to comply shall be prominently displayed on the notice. A person that disobeys a notice of exclusion may be cited and/or arrested for the crime of trespass premises under the Code.~~
- ~~(6) Appeal. A person receiving a notice of exclusion shall have the right to a hearing to have the exclusion rescinded or the period of exclusion reduced. All of the following apply to an appeal from a notice of exclusion:~~
 - ~~(a) The hearing request must be filed in writing to the municipal court within ten (10) days after receipt of the notice of exclusion.~~

~~(b) The hearing shall be conducted by the municipal court judge within ten (10) days of receipt of a proper request filed pursuant to this section; excluding Saturdays, Sundays and holidays. The hearing may be rescheduled for good cause shown, but shall be scheduled no later than five (5) additional business days from the rescheduled request.~~

~~(c) If an appeal is timely filed, the period of exclusion shall be stayed, pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of exclusion shall be effective immediately upon issuance of the municipal court's decision. If a person is issued a subsequent notice of exclusion from the city property while a previous notice of exclusion is stayed pending appeal, the stayed exclusion shall be counted in determining the appropriate length of the subsequent exclusion. If the previous exclusion is set aside, the term of the subsequent exclusion shall be reduced as if the previous exclusion had not been issued.—~~

~~(d) The City shall have the burden of proving by a preponderance of the evidence the validity of the exclusion.~~

~~(e) If the municipal court finds by a preponderance of the evidence that each element necessary to issue the notice of exclusion has been proven, and if the exclusion is otherwise in accordance with law, the municipal court shall uphold the exclusion. However, if the municipal court finds that the City has not met its burden of proof, or that the exclusion is otherwise unlawful, then the municipal court shall enter an order rescinding the exclusion. In the event that the municipal court finds that the City has met its burden of proof, but that the length of the exclusion is unreasonable under the circumstances, the municipal court may issue an order shortening the length of exclusion. The decision of the municipal court is final.~~

(1) Civil Exclusion Zones. Civil exclusion zones are designated to protect the public from those whose illegal conduct poses a threat to the public health, safety, and welfare. In accordance with the provisions of this section, the Chief of Police or designee may exclude any person who is cited to appear, arrested, or otherwise taken into custody for any offense listed in subsection (2) of this section within a civil exclusion zone. Nothing in this section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the Oregon or federal constitution. However, a person engaged in such protected activity who commits acts that are not protected shall be subject to exclusion as provided by this section. Civil exclusion zones include the following places:

(a) City Property. Any property owned or managed by the City, including but not limited to parks, greenways, buildings, parking lots, or other land or physical structures. A person shall only be excluded from the city property that the person receives a notice of exclusion for.

(b) The Downtown District. Comprises the area bound by Bear Creek, the north right-of-way of Sixth Street, the west right-of-way of Oakdale Avenue, and the south right-of-way of Tenth Street (as shown on Map A).

(2) Offenses; Penalty. A person is subject to civil exclusion for a period of 90 days from entering or remaining within a civil exclusion zone if that person has been cited to appear, arrested or otherwise taken into custody within a civil exclusion zone for any of the following offenses:

(a) alcoholic liquor violations as provided in the Oregon Liquor Control Act, or Medford code sections 5.310, 5.350, 5.360, or 5.361;

(b) any sexual offense, as provided by ORS 163.355 through 163.465;

(c) arson or related offenses as provided in ORS 164.315 through 164.335;

(d) assault as provided in ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185,

- or Medford code section 5.105;
 - (e) criminal mischief as provided in ORS 164.345 through 164.365 or Medford code section 5.270;
 - (f) disorderly conduct as provided in ORS 166.025 or Medford code section 5.120;
 - (g) discharge of weapons as provided in Medford code section 5.160
 - (h) failure to control dangerous dog as provided in Medford code section 5.603.
 - (i) graffiti offenses as provided in ORS 164.381 through ORS 164.386 or Medford code section 5.519;
 - (j) harassment as provided in ORS 166.065 or Medford code section 5.130;
 - (k) intimidation as provided in ORS 166.155 through 166.165;
 - (l) marijuana-related offenses as provided in the Control and Regulation of Marijuana Act, the Oregon Medical Marijuana Act, or Medford code sections 5.652, 5.653, 5.705, 5.710, or 5.715;
 - (m) menacing as provided in ORS 163.190 or Medford code section 5.110;
 - (n) possession, manufacture, or delivery of a controlled substance or related offenses as provided in ORS 167.203, ORS 475.005 through 475.285, and ORS 475.752 through 475.980;
 - (o) prostitution or related offenses as provided in ORS 167.007 through ORS 167.017;
 - (p) public urination as provided in Medford code section 5.125, except if the conduct involves only urination on a permeable surface in a park or greenway;
 - (q) recklessly endangering another person as provided in ORS 163.195 or Medford code section 5.115;
 - (r) strangulation as provided in ORS 163.187;
 - (s) theft as provided in ORS 164.015 through 164.140 or Medford code sections 5.291 through 5.298.
- (3) Violation. (a) If a person excluded from a civil exclusion zone is found within the boundary of the civil exclusion zone during the exclusion period, that person may be arrested for Trespass-Premises as provided in Medford code section 5.250. A person is not considered to be within a civil exclusion zone if the person is within an exclusion zone and the person is:
- (i) passing through the exclusion area;
 - (ii) in the act of obtaining social, medical, or like services;
 - (iii) in the act of seeking employment or performing work directly related to lawful employment;
 - (iv) attending a public meeting;
 - (v) attending a court hearing, meeting with an attorney or criminal justice personnel, or engaged in any activity ordered by a court;
 - (vi) in the act of filing an appeal to an exclusion notice issued under this section;
 - (vii) attending religious services or otherwise exercising a constitutional right.
- (b) A person shall not be issued an exclusion notice for prohibited camping or for otherwise sleeping within an exclusion zone.
- (4) Exclusion Notice. The Chief of Police is designated as the person in charge of civil exclusion zones for the purpose of issuing exclusion notices in accordance with this ordinance, and may authorize employees of the police department to issue exclusion

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notices. Written notice shall be given to any person excluded from a civil exclusion zone. The notice shall specify the area from which the person is excluded, the length of exclusion, the offense(s) the person is accused of violating, and a description of the offending conduct. Warnings of consequences for failure to comply shall be prominently displayed on the notice. The notice shall inform the excluded person of the right to appeal to the municipal court, and shall include information on the time limit to file an appeal and place to deliver the appeal. Unless otherwise provided in the exclusion notice, the term of exclusion shall take effect upon issuance.

(5) Appeal. A person receiving an exclusion notice shall have the right to a hearing to have the exclusion rescinded, the period of exclusion reduced, or to request a variance.

- (a)** The hearing request must be filed in writing to the Municipal Court Clerk at Medford City Hall within ten (10) days after receipt of the notice of exclusion. The hearing shall be conducted by the municipal court judge within ten (10) days of receipt of a request filed pursuant to this section; excluding Saturdays, Sundays, and holidays.
- (b)** The hearing may be rescheduled for good cause shown, but shall be scheduled no later than five (5) additional business days from the rescheduled request. If an appeal is timely filed, the period of exclusion shall be stayed, pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of exclusion shall be effective immediately upon issuance of the municipal court's decision.
- (c)** The City shall have the burden of proving by a preponderance of the evidence the validity of the exclusion. If the municipal court finds by a preponderance of the evidence that the exclusion was based upon the conduct proscribed by subsection (2), and if the exclusion is otherwise in accordance with law, the municipal court shall uphold the exclusion. However, if the municipal court finds that the City has not met its burden of proof, or that the exclusion is otherwise unlawful, then the municipal court shall enter an order rescinding the exclusion. In the event that the municipal court finds that the City has met its burden of proof, but that the length or scope of the exclusion is unreasonable under the circumstances, the municipal court may issue an order shortening the length of exclusion or allowing for a variance. The decision of the municipal court is final.

(6) Variance. (a) The Court may in its discretion grant a variance to an excluded person at any time during the period of exclusion if the person:

- (i)** presents a plausible need to engage in any non-criminal activity that is not associated with the behavior supporting the person's exclusion;
- (ii)** establishes that he or she resides within an exclusion zone;
- (iii)** presents a plausible need to obtain goods and services not otherwise available outside the exclusion zone to satisfy the person's essential needs; or

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(b) The variance shall be in writing, for a specific period of time and only to accommodate a specific purpose, all of which shall be stated on the variance. The excluded person shall

keep the variance document on his or her person at all times the person is within the exclusion area.

PASSED by the Council and signed by me in authentication of its passage this ____ day of _____, 2017.

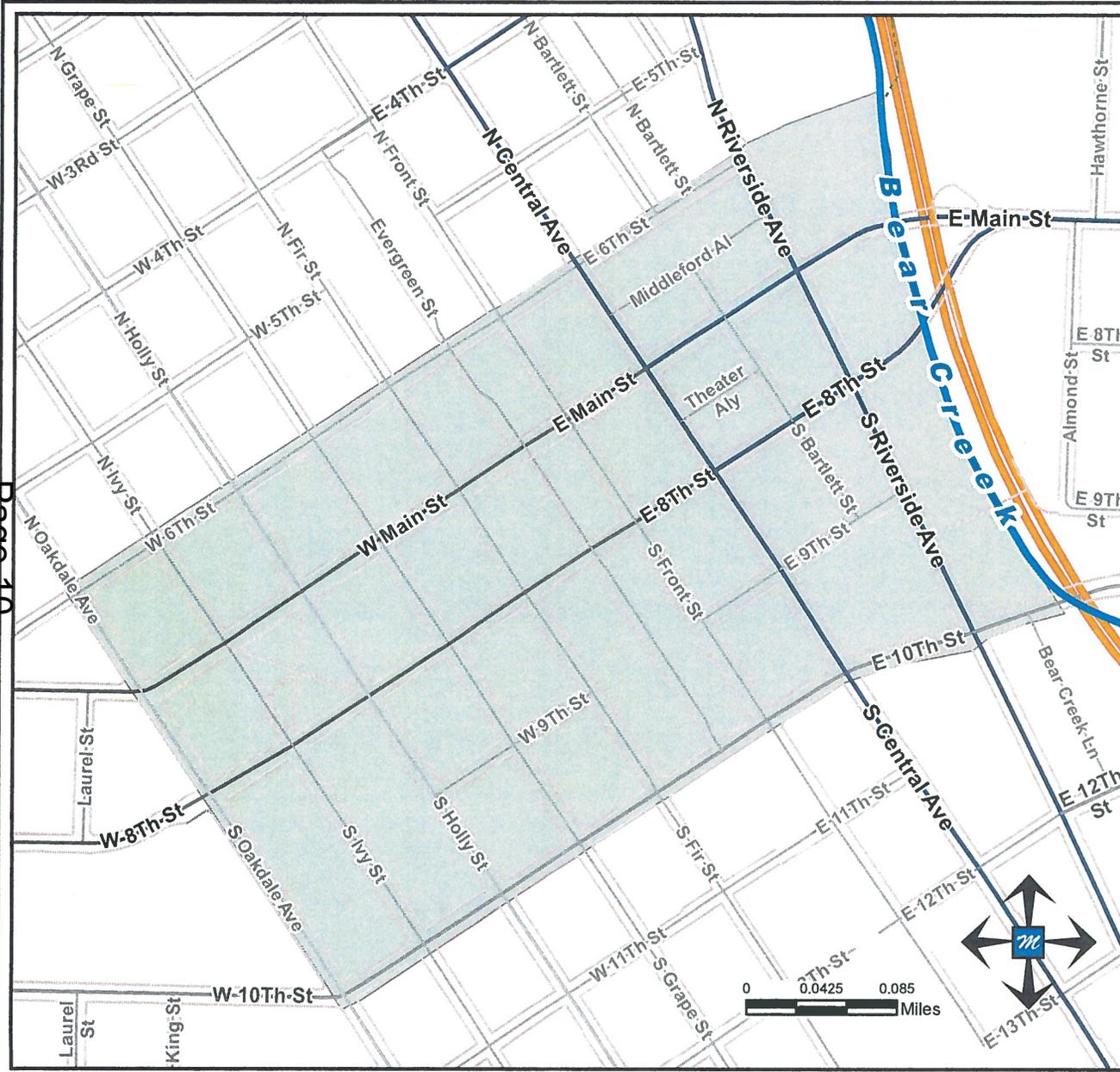
ATTEST: _____
City Recorder

Mayor

APPROVED _____, 2017.

Mayor

NOTE: Matter in **bold** is new. Matter ~~struck-out~~ is existing law to be omitted. Three asterisks (* * *) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity.



City of
Medford Downtown District
Civil Exclusion Zone

Legend

-  Sidewalks (Updated in 2010)
-  Downtown District Civil Exclusion Zone



Date: 4/10/2017

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CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 40.2

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DEPARTMENT:	Legal	AGENDA SECTION:	Ordinances and Resolutions
PHONE:	(541) 774-2020	MEETING DATE:	May 4, 2017
STAFF CONTACT:	Kevin McConnell, Deputy City Attorney Sgt. Don Lane, MPD		

COUNCIL BILL 2017-42 – SECOND READING

An ordinance repealing sections 5.511 through 5.518 and adding sections 7.960, 7.962, 7.964, 7.966, 7.968, 7.970, 7.972, 7.974, 7.976, 7.978 of the Medford Municipal Code pertaining to chronic nuisance property.

SUMMARY AND BACKGROUND

In 1998, the Council adopted its Chronic Nuisance Property Ordinance (Medford Code sections 5.511 through 5.518). The ordinance allows the City to hold property owners accountable for repeated instances of nuisance activity that occur on or near a commercial or residential property.

In general, a property is determined to be a chronic nuisance property when the City determines that three or more nuisance activities have occurred on or within 200 feet of a property during any thirty-day period. The term “nuisance activities” includes an extensive list of state and city offenses. The ordinance does not require a conviction for criminal activity prior to the commencement of any remedy allowed under its provisions.

If the City determines that a property has become a chronic nuisance property, the ordinance requires the property owner to propose a course of action that the City agrees will abate the nuisance activities. If a property owner fails to do so, the ordinance permits the City to file a complaint for the abatement of nuisance activities at the property, seek its closure for up to one year, and request a civil penalty for each day the nuisance activities occurred following notice.

While the ordinance has successfully abated nuisance activities at several commercial and residential properties over the years, the Medford Police Department (MPD) has struggled to document the occurrence of three or more nuisance activities within thirty days. As a result, many properties with repeated instances of nuisance activity escape appropriate enforcement action. The effect of the City’s proposed amendment to the definition of “chronic nuisance property” will be to hold more chronic nuisance property owners accountable under the ordinance.

In addition, city and state laws have changed since the adoption of the ordinance in 1998. Given the amendments to city and state law over the past 20 years, an update of the definition of “nuisance activities” is necessary.

Finally, while the ordinance requires a property owner to propose a “course of action” to abate the nuisance activities at a property, it does not describe what the property owner is required to submit to MPD.

The amendments to the ordinance address the issues stated above and otherwise update this nearly 20 year-old ordinance.

PREVIOUS COUNCIL ACTIONS

City Council adopted Ordinance 1998-232 on October 15, 1998.

City Council held a Study Session on March 23, 2017.

First Reading and Council vote was on April 20, 2017.



CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 40.2

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ANALYSIS

This code amendment:

- 1) Updates the definition of “Chronic Nuisance Property” to include four or more reported nuisance activities reported during any 120-day period or six or more nuisance activities reported during any 365-day period;
- 2) Updates the definition of “Nuisance Activities” by ensuring citation to the correct Oregon Revised Statutes and adds pertinent state and city offenses adopted after 1998 (i.e., strangulation; marijuana related offenses; failure to control dangerous dog);
- 3) Clarifies the “course of action” a property owner must take after the City has determined a property to be a chronic nuisance property. A property owner must submit a Chronic Nuisance Abatement Plan (CNAP), which is a plan that includes actions to abate, correct or eliminate the occurrence of chronic nuisance activities on or around the property. A CNAP must include an implementation timeline;
- 4) Specifies that in addition to the commencement of a civil action, the City may issue daily citations to the person in charge for violations of the ordinance; and
- 5) Increases the civil penalty from \$100 per day to \$250 per day for each day nuisance activities occurred on the property following notice.
- 6) Moves the ordinance from Chapter 5 (Offenses) to Chapter 7 (Public Protection) of the Medford Municipal Code.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

None.

TIMING ISSUES

None.

COUNCIL OPTIONS

Approve, modify, or deny the ordinance.

STAFF RECOMMENDATION

Staff recommends approval of the ordinance.

SUGGESTED MOTION

I move to approve the adoption of the Chronic Nuisance Property ordinance.

EXHIBITS

Ordinance

ORDINANCE NO. 2017-42

AN ORDINANCE repealing sections 5.511 through 5.518 and adding sections 7.960, 7.962, 7.964, 7.966, 7.968, 7.970, 7.972, 7.974, 7.976, 7.978 of the Medford Municipal Code pertaining to chronic nuisance property.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

SECTION 1. Section 5.511 of the Medford Code is hereby repealed:

~~5.511 Chronic Nuisance Property. For purposes of Sections 5.511 through 5.518, the following mean:~~

~~“Chronic Nuisance Property”. Property on which three or more nuisance activities have occurred during any thirty (30) day period; property on which or within 200 feet of which any person associated with the property has engaged in three or more nuisance activities during any thirty (30) day period; or property which, upon request for execution for a search warrant, has been the subject of a determination by a court that probable cause that possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, 475.005 to 475.285 and/or 475.940 to 475.995 have occurred within the previous thirty (30) days; and the execution of the search warrant has resulted in the discovery of such controlled substances.~~

~~“Nuisance Activities”. Any of the following activities, behaviors or criminal conduct: harassment as defined in ORS 166.065(1)(a) or Medford Code 5.130; intimidation as provided in ORS 166.155 through 166.165; disorderly conduct as provided in ORS 166.025 or Medford Code 5.120; assault or menacing as provided in ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185, or ORS 163.190 or Medford Code 5.105 or 5.110; sexual abuse, contributing to the delinquency of a minor, or sexual misconduct as provided in ORS 163.415, ORS 163.425, ORS 163.427, ORS 163.435 or ORS 163.445; public indecency as provided in ORS 163.465; prostitution or related offenses as provided in ORS 167.007, 167.012, and ORS 167.017; alcoholic liquor violations as provided in ORS 471.105 through 471.482 or Medford Code 5.350 or 5.360; theft as provided in ORS 164.015 through 164.140 or Medford Code 5.291 through 5.298; arson or related offenses as provided in ORS 164.315 through 164.335; possession, manufacture, or delivery of a controlled substance or related offenses as provided in ORS 167.203, ORS 475.005 to 475.285, 475.940 to 475.995 or Medford Code 5.315; illegal gambling as provided in ORS 167.117, ORS 167.122, and ORS 167.127; criminal mischief as provided in ORS 164.345 through 164.365 or Medford Code 5.270; any attempt to commit (as defined by ORS 161.405), or conspiracy to commit (as defined by ORS 161.455), any of the above offenses; discharge of a firearm as provided in Medford Code 5.160; unlawful operation of sound producing or reproducing equipment or unnecessary noise as provided in Medford Code 5.225, excluding violations of 5.225 (1); unlawful drinking in public as provided in Medford Code 5.310.~~

~~“Control”. The ability to regulate, restrain, dominate, counteract or govern conduct that occurs on a property.~~

~~“Person in Charge”. Any person, in actual or constructive possession of a property, including but not limited to, an owner or occupant of property under his or her dominion, ownership or control.~~

~~“Permit”. To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or~~

agree to the doing of an act.

~~“Person”. Any natural person, agent, association, firm, partnership or corporation capable of owning, occupying or using property in the City of Medford.~~

~~“Property”. Any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to, any business or residential premises, room, house, parking area, loading area, landscaping, building or structure or any separate part, unit or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, property is limited to the unit or the portion of the property on which any nuisance abatement has occurred or is occurring, but includes areas of the property used in common by all units of property including without limitation other structures erected on the property and areas used for parking, loading and landscaping.~~

~~“Person Associated With”. Any person who, on the occasion of a nuisance activity, has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a property or person present on a property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner thereof.~~

SECTION 2. Section 5.512 of the Medford Code is hereby repealed:

~~5.512 Violation.~~

~~(1) Any property within the City of Medford which is a chronic nuisance property is in violation of these provisions and subject to the remedies prescribed.~~

~~(2) Any person in charge who permits property to be a chronic nuisance property shall be in violation of these provisions and subject to the remedies prescribed.~~

SECTION 3. Section 5.513 of the Medford Code is hereby repealed:

~~5.513 Procedure.~~

~~(1) When the Chief of Police receives two or more police reports documenting the occurrence of a nuisance activity on or within 200 feet of a property within the city, the Chief or the Chief's designee shall independently review such reports to determine whether they describe any acts enumerated under Nuisance Activities above. Following such review the Chief may notify the person in charge in writing that the property is in danger of become chronic nuisance property. The notice shall contain the following information:~~

~~(a) The street address or a legal description sufficient for identification of the property.~~

~~(b) A statement that the Chief has information that the property may be chronic nuisance property, with a concise description of the nuisance activities that may exist, or that have occurred. The Chief shall offer the person in charge an opportunity to propose a course of action that the Chief agrees will abate the nuisance activities giving rise to the violation.~~

~~(c) Demand that the person in charge respond to the Chief within ten (10) days to discuss the nuisance activities.~~

~~(2) After notification of Nuisance Activities to a person in charge, when the Chief receives a police report documenting the occurrence of a third nuisance activity at or within 200 feet of a property and determines that the property has become chronic nuisance property, the Chief shall notify the person in charge in writing that the property has been determined to be a chronic nuisance property. The notice shall contain the following information:~~

- ~~(a) The street address or a legal description sufficient for identification of the property.~~
- ~~(b) A statement that the Chief has determined the property to be a chronic nuisance property with a concise description of the nuisance activities leading to his findings.~~
- ~~(c) Demand that the person in charge respond within ten (10) days to the Chief and propose a course of action that the Chief agrees will abate the nuisance activities giving rise to the violation.~~
- ~~(d) Service shall be made either personally or by first class mail, postage prepaid, return receipt requested, addressed to the person in charge at the address of the property, or such other place which is likely to give the person in charge notice of the determination by the Chief.~~
- ~~(e) A copy of the notice shall be served on the owner at such address as shown on the tax rolls of the county, and/or the occupant at the address of the property, if these persons are different than the person in charge, and shall be made either personally or by first class mail, postage prepaid.~~
- ~~(f) A copy of the notice shall also be posted at the property if ten days has elapsed from the service or mailing of the notice to the person in charge and the person in charge has not contacted the Chief.~~
- ~~(g) The failure of any person to receive notice that the property may be a chronic nuisance property shall not invalidate or otherwise affect the proceedings under these provisions.~~
- ~~(3) If after the notification, but prior to the commencement of legal proceedings by the city pursuant to these provisions, a person in charge stipulates with the Chief that the person in charge will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation, the Chief may agree to postpone legal proceedings for a period of not less than ten (10) nor more than thirty (30) days.~~
- ~~(4) Concurrent with any notification procedures set forth above, the Chief shall send copies of the notice, as well as any other documentation which supports legal proceedings against the property, to the City Attorney.~~
- ~~(5) When a person in charge makes a response to the Chief, any conduct or statements made in connection with the furnishing of that response shall not constitute an admission that any nuisance activities have or are occurring. This section does not require the exclusion of any evidence which is otherwise admissible or offered for any other purpose.~~

SECTION 4. Section 5.514 of the Medford Code is hereby repealed:

~~5.514 Burden of Proof; Defenses; Mitigation of Civil Penalty.~~

- ~~(1) In an action for chronic nuisance property, the city shall have the initial burden of proof to show by a preponderance of the evidence that the property is chronic nuisance property.~~
- ~~(2) It is a defense to an action for chronic nuisance property that the person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic nuisance property.~~
- ~~(3) In establishing the amount of any civil penalty requested, the Court may consider any of the following factors and shall cite those found applicable:
 - ~~(a) The actions taken by the person in charge to mitigate or correct the nuisance activities at the property;~~
 - ~~(b) The financial condition of the person in charge;~~~~

- ~~(c) Whether the problem at the property was repeated or continuous;~~
- ~~(d) The magnitude or gravity of the problem;~~
- ~~(e) The cooperativeness of the person in charge with the city;~~
- ~~(f) The cost of the city of investigating and correcting or attempting to correct the nuisance activities.~~
- ~~(g) Any other factor deemed by the Court to be relevant.~~

SECTION 5. Section 5.515 of the Medford Code is hereby repealed:

~~5.515 Closure During Pendency of Action; Emergency Closures.~~

~~Any emergency closure proceeding initiated under this provision shall be based on evidence showing that nuisance activities have occurred on the property and that emergency action is necessary to avoid an immediate threat to public welfare and safety. Proceedings to obtain an order of emergency closure shall be governed by the provisions of ORCP 79 for obtaining temporary restraining orders. In such an event the notification procedures set forth above need not be complied with.~~

SECTION 6. Section 5.516 of the Medford Code is hereby repealed:

~~5.516 Commencement of Actions; Remedies.~~

~~(1) The City Manager may authorize the City Attorney to commence legal proceedings in a court of competent jurisdiction to enjoin or abate chronic nuisance property and to seek closure, the imposition of civil penalties against any or all of the persons in charge thereof, and any such other relief deemed appropriate.~~

~~(2) If after the commencement but prior to the trial of any action or suit brought by the city, a person in charge of chronic nuisance property stipulates with the city that he or she will pursue a course of action the parties agree will abate the nuisance activities giving rise to the violation, the city may agree to stay proceedings for a period of not less than ten (10) nor more than sixty (60) days, except in the case of nuisance activity involving drugs where a search warrant was executed at the property. The person in charge or the city may thereafter petition the court for such additional periods of time as may be necessary to complete the action(s) to abate the nuisance activities. However, in the event that the city reasonably believes the person in charge of a property is not diligently pursuing the action(s) necessary to abate the nuisance activities, the city may apply to the court for release from the stay and may seek such relief as is deemed appropriate.~~

~~(3) In the event a court determines property to be chronic nuisance property, the court shall order that the property be closed and secured against all access, use and occupancy for a period of not less than six (6) months, nor more than one (1) year. The court shall retain jurisdiction during any period of closure. The person in charge may petition the court for an order reducing the period of closure if the person in charge and the city stipulate that the nuisance has been and will continue to be abated.~~

~~(4) If a property is found to be chronic nuisance property, the person in charge of the chronic nuisance property is subject to a civil penalty of up to \$100 per day for each day nuisance activities occurred on the property following notice.~~

~~(5) The provisions of Section 5.511 through 5.518 are separate and distinct remedies from those specified in Sections 5.520 through 5.535. Nothing in these provisions shall require any~~

~~conviction for criminal activities prior to the commencement of any action provided herein.~~

SECTION 7. Section 5.517 of the Medford Code is hereby repealed:

~~5.517 Enforcement.~~

~~(1) The court may authorize the city to physically secure the property against all access, use or occupancy in the event that the person in charge fails to do so within the time specified by the court. In the event that the city is authorized to secure the property, all costs reasonably incurred by the city to physically secure the property shall be paid to the city by the person in charge and may be included in the city's money judgment. As used in this section, "costs" means those costs actually incurred by city for physically securing the property, as well as tenant relocation costs pursuant to this section.~~

~~(2) The city department(s) physically securing the property shall prepare a statement of costs and the city shall thereafter submit that statement to the court for its review. If no objection to the statement is made within the period prescribed by Oregon Rule of Civil Procedure 68, the statement of costs shall be included in the city's money judgment.~~

~~(3) Judgments imposed by this chapter shall bear interest at the rate of nine percent (9%) per year from the date the judgment is entered.~~

~~(4) Any person who is assessed the costs of physically securing the property by the court shall be personally liable for the payment thereof to the city.~~

~~(5) The person in charge shall pay reasonable relocation costs of a tenant as defined by ORS 90.100(31) if, without actual notice, the tenant moved into the property after either:~~

~~(a) A person in charge received a notice from the Chief's determination that the property may be nuisance property; or~~

~~(b) A person in charge received notice of an action brought to close a chronic nuisance property.~~

SECTION 8. Section 5.518 of the Medford Code is hereby repealed:

~~5.518 Severability. The provisions of Sections 5.511 through 5.517 are intended to be consistent with any applicable provisions of state law. If any provision, or its application to any person, or circumstances is held to be invalid for any reason, the remainder of these provisions, or the application of them to other persons or circumstances shall not in any way be affected.~~

CHRONIC NUISANCE PROPERTY

SECTION 9. Section 7.960 of the Medford Code is added to read as follows:

7.960 Intent and Purpose of Sections 7.960 to 7.978.

The City Council finds that:

(1) By virtue of its authority to protect the health, safety, and welfare of the community, the City has the power to abate a violation of the Code declared to be a public nuisance by imposing a fine on the owner of the property, requiring the owner to abate the nuisance, or abating the nuisance if the owner fails to do so. However, the abatement of a single nuisance is ineffective in protecting the health, safety, and welfare of the community at large when conditions or activities related to the use of property give rise to a series of

public nuisances over time.

(2) A process to hold property owners and other persons in charge of property accountable for adverse conditions and activities that repeatedly occur in connection with the property is needed to help maintain and improve the quality of life in the City.

(3) Pursuant to the City's authority to protect the health, safety, and welfare of the community, this ordinance is enacted to establish the rights, duties, and procedures necessary to hold property owners and other persons in charge of property accountable for adverse conditions and activities that repeatedly occur in connection with the property.

SECTION 10. Section 7.962 of the Medford Code is added to read as follows:

7.962 Definitions.

Words and phrases used in sections 7.960 through 7.978 shall have the following meanings ascribed to them:

(1) "Chronic Nuisance Abatement Plan (CNAP)" means a plan required to be submitted by a person in charge in response to a notice authorized under section 7.964 that includes actions to abate, correct, or eliminate the occurrence of chronic nuisance activities on or around the property. A CNAP may include, but is not limited to the following: actions to remedy building code, fire code, property maintenance code, and nuisance code violations; eviction of problem tenants responsible for causing chronic nuisance activities; or hiring security guards to monitor the property. A CNAP shall include an implementation timeline.

(2) "Chronic Nuisance Property" means property on which:

- (a) three or more nuisance activities have occurred during any 30-day period;
- (b) four or more nuisance activities have occurred during any 120-day period;
- (c) six or more nuisance activities have occurred during any 365-day period; or
- (d) a court has issued a search warrant based upon probable cause that possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, ORS 475.005 through ORS 475.285 and/or ORS 475.752 through 475.980 has occurred within the previous thirty (30) days, and the execution of the search warrant has resulted in the discovery of such controlled substances.

(3) "Nuisance Activities" means any of the following activities, behaviors, or criminal conduct that occurs on or within 200 feet of a property:

- (a) harassment as provided in ORS 166.065 or Medford Municipal Code section 5.130;
- (b) intimidation as provided in ORS 166.155 through 166.165;
- (c) disorderly conduct as provided in ORS 166.025 or Medford Municipal Code section 5.120;
- (d) assault as provided in ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185 or Medford Municipal Code section 5.105;
- (e) strangulation as provided in ORS 163.187;
- (f) menacing as provided in ORS 163.190 or Medford Municipal Code section 5.110;
- (g) recklessly endangering another person as provided in ORS 163.195 or Medford Municipal Code section 5.115;
- (h) public and private indecency as provided in ORS 163.465 and ORS 163.467;
- (i) prostitution or related offenses as provided in ORS 167.007 through ORS

167.017;

- (j) alcoholic liquor violations as provided in the Oregon Liquor Control Act, or Medford Municipal Code sections 5.310, 5.350, 5.360 or 5.361;
- (k) theft as provided in ORS 164.015 through 164.140 or Medford Municipal Code sections 5.291 through 5.298;
- (l) arson or related offenses as provided in ORS 164.315 through 164.335;
- (m) possession, manufacture, or delivery of a controlled substance or related offenses as provided in ORS 167.203, ORS 475.005 through 475.285, and ORS 475.752 through 475.980;
- (n) illegal gambling as provided in ORS 167.118, ORS 167.122, and ORS 167.127;
- (o) criminal mischief as provided in ORS 164.345 through 164.365 or Medford Municipal Code section 5.270;
- (p) any attempt to commit (as defined by ORS 161.405), or conspiracy to commit (as defined by ORS 161.455), any of the above offenses;
- (q) marijuana-related offenses as provided in the Control and Regulation of Marijuana Act (ORS 475B.010 through ORS 475B.395), the Oregon Medical Marijuana Act (ORS 475B.400 through ORS 465B.525), or Medford Municipal Code sections 5.652, 5.653, 5.705, 5.710, or 5.715;
- (r) hindering prosecution as provided in ORS 162.325;
- (s) discharge of weapons as provided in Medford Municipal Code section 5.160;
- (t) public urination as provided in Medford Municipal Code section 5.125;
- (u) unnecessary noise as provided in Medford Municipal Code section 5.225(1)(a-b);
- (v) unlawful accumulation of junk as provided in Medford Municipal Code section 5.500;
- (w) failure to control dangerous dog as provided in Medford Municipal Code section 5.603.

(4) “Control” means the ability to regulate, restrain, dominate, counteract, or govern conduct that occurs on a property.

(5) “Person in Charge” means any person, in actual or constructive possession of a property, including but not limited to, an owner, occupant, tenant, or person authorized to manage a property.

(6) “Permit” means to suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

(7) “Person” means any natural person, agent, association, firm, partnership, or corporation capable of owning, occupying, using, or managing property in the City of Medford.

(8) “Property” means any property, including land and that which is affixed, incidental or appurtenant to land, including but not limited to, any business or residential premises, room, house, parking area, loading area, landscaping, building, or structure or any separate part, unit, or portion thereof, or any business equipment, whether or not permanent. For property consisting of more than one unit, property is limited to the unit or the portion of the property on which any nuisance abatement has occurred or is occurring, but includes areas of the property used in common by all units of property including without limitation other structures erected on the property and areas used for parking, loading, and landscaping.

(9) “Person Associated With” means any person who, on the occasion of a nuisance activity,

has entered, patronized, visited, or attempted to enter, patronize or visit, or waited to enter, patronize or visit a property or person present on a property, including without limitation any officer, director, customer, agent, employee, or any independent contractor of a property, person in charge, or owner thereof.

SECTION 11. Section 7.964 of the Medford Code is added to read as follows:

7.964 Notice and Manner of Service.

- (1) When the Medford Police Department receives a report documenting that a property has become a chronic nuisance property, the Chief or designee shall notify the person in charge in writing.**
- (2) The notice shall contain the following information:**
 - (a) The street address or a legal description sufficient for identification of the property.**
 - (b) A statement that the Chief or designee has determined the property to be a chronic nuisance property, with a concise description of the nuisance activities upon which the statement is based.**
 - (c) A statement that the person in charge shall submit a CNAP to the Chief or designee within ten (10) days from the date the notice was personally served or mailed.**
- (3) Service shall be made either personally or by certified mail-restricted delivery, addressed to the person in charge at the address of the property, or such other place which is reasonably calculated, under all the circumstances, to notify the person in charge of the City's determination. A copy of the notice shall be served on the owner of the property at such address shown on the tax rolls of the county, if that person is different than the person in charge, and shall be made either personally or by certified mail-restricted delivery.**
- (4) At or near the same time of the delivery of the notice set forth in subsection (d), the City shall post a copy of the notice at the property.**
- (5) Concurrent with any notification procedures set forth above, the City shall send copies of the notice, as well as any other documentation which supports legal proceedings against the property, to the City Attorney.**

SECTION 12. Section 7.966 of the Medford Code is added to read as follows:

7.966 Chronic Nuisance Abatement Plan.

- (1) A person in charge shall respond to the Chief or designee within ten (10) days of the date the notice described in section 7.964 was served by submitting a CNAP describing the actions that the person in charge will take to abate, correct, or eliminate the occurrence of chronic nuisance activities.**
- (2) The Chief or designee shall review the CNAP submitted by the person in charge and shall approve or deny it in writing within ten (10) days of it being submitted.**
- (3) The Chief or designee shall approve the plan if it is determined that the actions proposed are likely to substantially decrease the incidence of chronic nuisance activities on or around the property.**

- (4) In the event the CNAP is denied, the reasons for the denial shall be included and the person in charge shall have ten (10) days to resubmit a plan for approval.**
- (5) After the Chief or designee approves a CNAP, the person in charge shall implement it in accordance with the timeline and terms set forth within the CNAP.**

SECTION 13. Section 7.968 of the Medford Code is added to read as follows:

7.968 Violation

- (1) Any property within the City which is a chronic nuisance property is subject to the remedies prescribed in this ordinance.**
- (2) Any person in charge in violation of this ordinance shall be subject to the remedies prescribed in this ordinance.**
- (3) The following actions constitute a violation of this ordinance:**
 - (a) failing to submit a CNAP as required by section 7.966(1);**
 - (b) failing to submit an approved CNAP as required by section 7.966(4);**
 - (c) failing to implement the CNAP in accordance with the timeline and terms set forth within the plan as required by section 7.966(5); or**
 - (d) a report of an additional nuisance activity at the property after service of the notice described in section 7.964.**
- (4) A violation of subsection (3) of this section constitutes a violation. Every day in which the violation exists constitutes a separate violation.**

SECTION 14. Section 7.970 of the Medford Code is added to read as follows:

7.970 Commencement of Civil Action; Remedies.

- (1) If the person in charge fails to submit and implement a CNAP as required, or the approved CNAP does not result in the abatement of the chronic nuisance activity, the City Manager may refer the matter to the City Attorney to commence legal proceedings to seek closure of the property, the imposition of civil penalties, and any such other relief deemed appropriate. The action shall be brought in any court of competent jurisdiction, including the City of Medford Municipal Court. The court may award attorney fees to the prevailing party.**
- (2) The action shall be commenced by the filing of a complaint alleging facts constituting the nuisance activities, and containing a legal description of the property involved and an allegation that the owners of record of the property have been notified of the facts giving rise to the alleged nuisance activities at least ten (10) days prior to the filing of the action with the court.**
- (3) The complaint shall be served as provided in Oregon Rules of Civil Procedure (ORCP) 7. No service need be made prior to an application for a temporary restraining order, provided the procedures of ORCP 79 B are followed with regard to all persons entitled to service under this section.**
- (4) If after the commencement but prior to the trial of any action or suit brought by the City, a person in charge stipulates with the City that he or she will pursue a course of**

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action the parties agree will abate the nuisance activities giving rise to the violation, the City may agree to stay proceedings for a period of not less than ten (10) days nor more than sixty (60) days. The person in charge or the City may thereafter petition the court for such additional periods of time as may be necessary to complete the action(s) to abate the nuisance activities. However, in the event that the City reasonably believes the person in charge of a property is not diligently pursuing the action(s) necessary to abate the nuisance activities, the City may apply to the court for release from the stay and may seek such relief as is deemed appropriate.

(5) When a person in charge responds to the Medford Police Department as required by this ordinance, statements made in connection with that response shall not constitute an admission of any chronic nuisance activities. This subsection does not require the exclusion of any evidence that is otherwise admissible or offered for any other purpose.

(6) If the existence of the nuisance is established in the action, an order of abatement shall be entered as part of the judgment in the case. The order may contain any or all of the following remedies:

(a) Order that the property be closed and secured against all access, use, and occupancy for a period of not less than six (6) months, nor more than one (1) year. The court shall retain jurisdiction during any period of closure. The person in charge may petition the court for an order reducing the period of closure if the person in charge and the City stipulate that the nuisance has been and will continue to be abated. The court shall not include provisions for the closing of the premises under the provisions of this subsection unless that relief is specifically requested in the complaint.

(b) Impose a civil penalty of up to \$250 per day for each day nuisance activities occurred on the property following notice;

(c) any other relief prayed for and deemed appropriate.

(7) A property shall no longer be determined to be a chronic nuisance property either after the passage of one year from the date of the last reported chronic nuisance activity or the date the chronic nuisance abatement plan was approved, whichever is later.

(8) The provisions of section 7.960 through 7.978 are separate and distinct remedies from those specified in Medford Code sections 5.520 through 5.535. Nothing in these provisions shall require any conviction for criminal activities prior to the commencement of any action provided herein.

SECTION 15. Section 7.972 of the Medford Code is amended to read as follows:

7.972 Burden of Proof, Defenses, Mitigation of Civil Penalty.

(1) The City shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property.

(2) It is an affirmative defense to an action against a chronic nuisance property that the person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not, in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is a chronic nuisance property.

(3) In establishing the amount of any civil penalty requested, the Court may consider any of the following factors and shall cite those found applicable:

- (a) **The actions taken by the person in charge to mitigate or correct the nuisance activities at the property;**
- (b) **The financial condition of the person in charge;**
- (c) **Whether the problem at the property was repeated or continuous;**
- (d) **The magnitude or gravity of the problem;**
- (e) **The cooperativeness of the person in charge with the city;**
- (f) **The cost incurred by the city for investigating and correcting or attempting to correct the nuisance activities;**
- (g) **Any other factor deemed by the court to be relevant.**

SECTION 16. Section 7.974 of the Medford Code is added to read as follows:

7.974 Closure During Pendency of Action; Emergency Closures.

Any emergency closure proceeding initiated under this ordinance shall be based on evidence showing that nuisance activities have occurred on the property and that emergency action is necessary to avoid an immediate threat to public welfare and safety. Proceedings to obtain an order of emergency closure shall be governed by the provisions of ORCP 79 for obtaining temporary restraining orders.

SECTION 17. Section 7.976 of the Medford Code is added to read as follows:

7.976 Enforcement; Award of Costs and Disbursements or Attorney Fees.

(1) The court may authorize the City to physically secure the property against all access, use, or occupancy in the event that the person in charge fails to do so within the time specified by the court. In the event that the City is authorized to secure the property, all costs reasonably incurred by the City to physically secure the property shall be paid to the City by the person in charge and shall be included in a judgment pursuant to ORCP 68. The judgment shall also include an award of the City's other costs and disbursements and attorney fees, if applicable.

(2) The person in charge shall pay reasonable relocation costs of a tenant as determined by the court if, without actual notice, the tenant moved into the property after either:

- (a) **A person in charge received a notice from the Chief or designee that the property has become a chronic nuisance property; or**
- (b) **A person in charge was served with a complaint to close a chronic nuisance property.**

(3) Any person who is assessed costs and disbursements and/or attorney fees under this section shall be personally liable for the payment thereof to the city.

SECTION 18. Section 7.978 of the Medford Code is added to read as follows:

7.978 Severability. The provisions of sections 7.960 through 7.978 are intended to be consistent with any applicable provisions of state law. If any provision or its application to any person or circumstances, is held to be invalid for any reason, the remainder of these

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provisions, or the application of them to other persons or circumstances, shall not in any way be affected.

PASSED by the Council and signed by me in authentication of its passage this ____ day of _____, 2017.

ATTEST: _____
City Recorder
_____ Mayor

APPROVED _____, 2017.
_____ Mayor

NOTE: Matter in **bold** is new. Matter ~~struck out~~ is existing law to be omitted.



CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 60.1

www.ci.medford.or.us

DEPARTMENT: Parks, Recreation, Facilities **AGENDA SECTION:** Ordinances and Resolutions
PHONE: (541) 774-2483 **MEETING DATE:** May 4, 2017
STAFF CONTACT: Rich Rosenthal, Director

COUNCIL BILL 2017-45

An ordinance authorizing execution of a contract with the Medford Senior Center, a 501(c)(3) non-profit corporation, to provide services and management of the Medford Senior Center beginning July 1, 2017.

SUMMARY AND BACKGROUND

City Council is asked to consider a prospective management contract between the Medford Senior Center, a 501(c)(3) non-profit, and the City of Medford. If approved, the Parks, Recreation and Facilities Department would provide day-to-day management of the Senior Center starting July 1, 2017.

PREVIOUS COUNCIL ACTIONS

At its March 9, 2017 study session, City Councilors in attendance directed staff to finalize a management services contract for the Medford Senior Center and to bring the management contract forward as a biennial budget issue.

ANALYSIS

In recent months, various City officials had been contacted about potential partnerships with the Medford Senior Center (MSC). On Jan. 17, 2017, the MSC Board of Directors voted unanimously to begin discussions with the Parks, Recreation and Facilities Department with the intent of drafting a mutually agreeable management contract for Board and City Council consideration.

The fundamental assumption of the contract is the Board would provide the City with funding to offset the annual costs associated with day-to-day supervision and management of the Center by the Department.

Starting July 1, 2017, under the terms of the two-year agreement the Department would be responsible for:

- Provision of Center staffing during regular business hours, excluding CITY holidays, 8:30 a.m.-4 p.m., Monday through Friday; 12:30-3:30 p.m., Saturdays.
- Administering the Senior Advocacy Program consisting of distribution of information pertaining to housing, caregiving, transportation, legal counseling and Medicare.
- Coordinating a variety of low-cost Older Adult enrichment programs operated at or from the Center or other City facilities.
- Providing on-site program and membership registration services.
- Assisting with marketing and promotions efforts.
- Coordinating volunteers.

The Board would be responsible for fully reimbursing the City on a quarterly basis throughout the biennium. The City's management costs are:

Item	FY18	FY19
Personnel Services	\$118,450	\$124,100
Materials & Services	16,000	9,500
Total	\$134,450	\$133,600

The Personnel Services line item includes the annual costs of a full-time recreation supervisor at the City's S14 pay grade and 2,000 hours of part-time staff. The Materials and Services line item covers a variety of technology services necessary for City operations.



CITY OF MEDFORD
AGENDA ITEM COMMENTARY

Item No: 60.1

www.ci.medford.or.us

Medford's only senior center is a 501(c)(3) non-profit organization that traces its origins back to 1958. In 1973, it moved into its current 510 E. Main St. location, a City-owned building that was conditionally deeded to the organization in 1993 so long as it was utilized as a social service center by a non-profit organization.

The Center, which provides a variety of services and enrichment programs for residents over age 54, is currently being operated by volunteers, partly necessitated by recent departures of three full-time paid staff members and lower-than-expected revenues. Key revenue streams are state-sanctioned Bingo, donations, memberships, grants, special events and thrift store income. Another source of revenue and expense is the Center's commercial kitchen.

Should the Center cease operations for longer than 90 days, the building would revert back to City ownership.

The Parks and Recreation Commission recommends Council approval of the contract. The Medford Senior Center Board approved the contract on April 25, 2017.

FINANCIAL AND/OR RESOURCE CONSIDERATIONS

City of Medford to be reimbursed on a quarterly basis by the Medford Senior Center in the total amount of \$268,050.

TIMING ISSUES

The creation of new full-time staffing position is under consideration by the Budget Committee. Should the Committee approve the budget issue, City Council approval of the management contract would start the staff recruitment process.

COUNCIL OPTIONS

Approve, modify or deny the ordinance.

STAFF RECOMMENDATION

Staff recommends approval of the ordinance.

SUGGESTED MOTION

I move to approve the Medford Senior Center management contract.

EXHIBITS

Ordinance
Medford Senior Center management contract

ORDINANCE NO. 2017-45

AN ORDINANCE authorizing execution of a contract with the Medford Senior Center a 501(c)(3) non-profit corporation, to provide services and management of the Medford Senior Center beginning July 1, 2017.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

That the execution of a contract with the Medford Senior Center a 501(c)(3) non-profit corporation, to provide services and management of the Medford Senior Center beginning July 1, 2017, which is on file in the City Recorder's office, is hereby authorized.

PASSED by the Council and signed by me in authentication of its passage this _____ day of _____, 2017.

ATTEST: _____
City Recorder

Mayor

APPROVED _____, 2017.

Mayor

Medford Senior Center Management Contract

THIS AGREEMENT, made this ____ day of _____, 20____, by and between the Medford Senior Center, a 501(c)3 in the State of Oregon, hereinafter termed "CENTER", and the CITY OF MEDFORD, a municipal corporation in the State of Oregon, hereinafter termed "CITY".

WHEREAS, over 29 percent of Medford residents are age 55 or older, a growing demographic; and

WHEREAS, the CITY's 2016-25 Leisure Services Plan identifies the need to expand recreation programs and services to meet changing demographics and growing community needs; and

WHEREAS, the CENTER wishes to upgrade management and enhance services provided by the Medford Senior Center, which serves several hundred members; and

WHEREAS, the CENTER and the CITY have determined that it is in the community's best interest to enter into this management contract.

Article 1. The Work

CITY, in consideration of the payment to be made to CITY by CENTER, and according to the mutual promises in this agreement, agrees to furnish all materials and labor for operational management of the Medford Senior Center.

Article 2. Scope of Services

CITY shall furnish materials and labor to perform the work according to the specifications and provisions set forth in Exhibit "A" and hereby incorporated.

Article 3. Time of Performance

The Agreement shall become effective July 1, 2017 and shall remain in effect unless terminated as provided for in this Agreement, and as amended after Year 2.

Article 4. Personnel

- A. The CITY represents that it employs, or will employ, all personnel required in performing the services under this Agreement.
- B. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the CENTER.

Article 5. Compliance with Laws and Regulations

CITY shall perform its Work in compliance with all federal and state laws and local ordinances and regulations as may be applicable, and with all such orders or decrees as exist at the present and those which may be made or enacted later by bodies or tribunals having any jurisdiction or authority over the work.

Article 6. Compensation

The CITY shall be paid in the amount and manner set forth in Exhibit B and hereby incorporated. The CITY may submit monthly, or less frequently, an invoice for payment. Cost of service listed in Exhibit B will be revised in conjunction with the CITY's budget process or more frequently as agreed by the parties.

Article 7. Rights To And Disposition Of Data

The term "subject data" as used herein includes all data, written materials, photographs, drawings or other information collected or created under this Agreement whether delivered under this Agreement or not. The term does not include financial records, accounting records or other information incidental to the administration of this Agreement. All subject data shall be retained by the CITY, in accordance with the terms of this Agreement, until disposition of such subject data shall have been determined in a manner mutually agreeable to the parties hereto. Subject data shall be available for study and utilization by both parties.

Article 8. Termination of Work

- A. This Agreement may be terminated by the mutual agreement and consent of both CITY and CENTER, or by either party with 90 days written notice.
- B. If the CENTER terminates this Agreement, the CITY shall be entitled to reimbursement of expenses incurred by CITY in performing work to the date of termination as well as costs associated with discontinuation of employment of full-time CITY personnel assigned to manage the Center.

Article 9. Indemnity

Both parties hereby agree to defend, indemnify, and hold harmless each other's officers, agents, and employees, from and against any and all liability, including but not limited to claims, damages, demands, expenses, fees, fines, penalties, suits, proceedings, actions, and costs of actions including, but not limited to, attorneys' fees for trial and on appeal, and for the preparation of same arising out of officers', agents', and employees' acts or omissions while performing services or actions associated with this Agreement. Provided,

however, that CENTER shall not be required to indemnify CITY against liability for damages arising out of death or bodily injury to persons or damage to property caused solely by the negligence of CITY, and that CITY shall not be required to indemnify CENTER against liability for damages arising out of death or bodily injury to persons or damage to property caused solely by the negligence of CENTER.

Article 10. Insurance

CENTER shall obtain at its own expense and maintain continuously in effect during the term of this Agreement the following minimum insurance:

(1) Commercial General Liability Insurance on an “occurrence” policy form covering Bodily Injury and Property Damage, Products/Completed Operations, Personal & Advertising Injury, and blanket Contractual Liability. Such insurance shall be primary and non-contributory, and provide limits of at least \$1,000,000 per Occurrence and a General Aggregate of at least \$2,000,000. “The City of Medford and its officers, employees and agents while acting within the scope of their duties as such” shall be named an Additional Insured by endorsement.

(2) Premises Liability Insurance covering the facility at issue in this contract. Such insurance shall provide a combined single limit per accident of at least \$1,000,000.

(3) Workers Compensation Insurance meeting statutory requirements of Oregon Workers Compensation Law must be provided by CENTER (and any sub-contractor CENTER may use) for any subject workers, as well as Employers Liability Insurance with limit of at least \$500,000.

If CENTER is statutorily exempt from the requirement to provide Workers Compensation Insurance, CENTER shall complete, sign, and submit the City’s form for Declaration of Exemption from Oregon Statutory Workers Compensation in lieu of Workers Compensation Insurance.

CENTER shall submit to CITY certificates of insurance for all policies listed above at time of this Agreement, and at each subsequent insurance renewal for the life of this Agreement. Certificate must include Additional Insured Endorsement for General Liability Insurance. Certificates of insurance for current coverage or activated tail coverage for Professional Liability Insurance, because it is a claims-made coverage, shall continue to be submitted to CITY for two (2) years following the effective term of this Agreement. Certificate Holder (and additional insured for General Liability) shall be shown as: City of Medford, 411 West 8th Street, Medford, OR 97501. Any request for exemption from this requirement must be in writing and approved by the CITY’S Risk Manager.

CENTER is responsible to assure that CITY receives a required thirty (30) days written notice prior to cancellation of, material change to, exhaustion of aggregate limits of, or intent not to renew any insurance policy for coverage required in this Agreement. Ten (10) days will be accepted for cancellation due to non-payment of premium. CENTER shall itself provide the written notice in the event that its insurance companies will not or do not provide such notice. Failure to maintain proper insurance and/or provide timely notification of a change in coverage is grounds for potential immediate termination of this contract.

Notwithstanding insurance requirements stated or any modifications made thereto, in no case shall the presence or absence of any insurance coverage, or any insurance policy limit, provision, term, or condition reduce the obligations of the BOARD for liability granted generally by law or specifically in the terms of this Agreement. In no case shall CITY be responsible for any amount of CENTER self-insurance, or any retention, deductible, or coinsurance amount required by CENTER's insurance policies.

IN WITNESS WHEREOF, CITY and CENTER have caused this contract to be executed for and on their behalf by their duly authorized officer(s) on the day and year first above written.

CITY OF MEDFORD, OREGON

By _____

Title _____

MEDFORD SENIOR CENTER

By _____

Title _____

Exhibit A – Scope of Work

Under CITY management, the Medford Senior Center will serve Medford citizens and members 55 years and older, with leisure, wellness, educational and healthy aging opportunities for the purpose of enriching quality of life in a safe, wholesome environment.

The Quality of Work provided under this Agreement shall be based on the best practices of Parks and Recreation facility and program management.

The CITY shall be responsible for:

- Administration and implementation of applicable Center operational bylaws.
- Provision of adequate Center office staffing during regular business hours, excluding CITY holidays, 8:30 a.m.-4 p.m., Monday through Friday; 12:30-3:30 p.m., Saturdays.
- Administering the Senior Advocacy Program consisting of distribution of information pertaining to housing, caregiving, transportation, legal counseling, Medicare and Medicare Part D.
- Coordination of a variety of low-cost Older Adult enrichment programs operated at or from the Center or other CITY facilities. CITY to retain program revenue to offset program cost.
- On-site program and membership registration services.
- Coordination of Center web site and social media presence.
- Publication and distribution of a Medford Senior Center newsletter.
- Coordination of volunteers and Easter Seals volunteer services.
- Providing cash-handling systems/methods approved by CITY Finance Department.
- Provide office furnishings, supplies, and equipment necessary for management.
- Provide semi-annual progress reports

In addition to the responsibilities listed above, and if resources are available, CITY will assist the Center's viability by:

- Promoting Center programs, membership and fundraisers in the Parks and Recreation Department's tri-annual program guide and via other promotional tools, such as Facebook and cable TV advertising.
- Assisting the CENTER with identifying and applying for grant funding opportunities.
- Advise the CENTER on facility management and capital repair considerations and options.

The CENTER will be responsible for:

- Licensing and operation of the Bingo program.
- Development of a Capital Improvement Plan.
- Fundraising and development plans and events.
- Providing membership and Board liaisons to CITY.

- Recruitment of Center's membership.
- Maintaining bylaws geared toward Center viability and maximum efficiency.
- Landscape maintenance costs.
- Administering meal program.
- Building utilities, repairs, and landscaping.

Exhibit B – Budget/Cost

Personnel Services	FY17-18	FY18-19
FT Recreation Supervisor	\$89,450	\$95,100
PT Staff TPN-2 office assistant (2,080 hours/yr)	\$29,000	\$29,000
<i>Subtotal</i>	<i>\$118,450</i>	<i>\$124,100</i>
Materials & Services		
Office work station start-up	\$4,500	
Office computer, supplies	\$4,000	\$4,000
Minor building modifications required for City operation	\$3,000	\$1,000
Publication printing and postage	\$4,500	\$4,500
<i>Subtotal</i>	<i>\$16,000</i>	<i>\$9,500</i>
Grand Total	\$134,450	\$133,600

Payment/Reimbursement

1. Payment deadline schedule:

Date	Amount
Oct. 2, 2017	\$33,612.50
Jan. 2, 2018	\$33,612.50
March 30, 2018	\$33,612.50
June 29, 2018	\$33,612.50
<i>Year 1 Subtotal</i>	<i>\$134,450</i>
Oct. 1, 2018	\$33,400
Jan. 2, 2019	\$33,400
April 1, 2019	\$33,400
June 28, 2019	\$33,400
<i>Year 2 Subtotal</i>	<i>\$133,600</i>
Total	\$268,050

2. Submit payments to City of Medford, c/o Finance Director, 411 W. Eighth St., Medford OR 97501.