



## Medford City Council Meeting

# Agenda

**December 15, 2016**

**12:00 Noon AND 7:00 P.M.**

**6:00 P.M. EXECUTIVE SESSION**

**Medford City Hall, Council Chambers  
411 West 8<sup>th</sup> Street, Medford, Oregon**

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### 10. Roll Call

#### Employee Recognition – Retirees

### 20. Approval or Correction of the Minutes of the December 1, 2016 Regular Meeting

### 30. Oral Requests and Communications from the Audience

Comments will be limited to 3 minutes per individual or 5 minutes if representing a group or organization. PLEASE SIGN IN.

### 40. Consent Calendar

40.1 COUNCIL BILL 2016-145 An ordinance amending sections 3.870, 3.871, 3.874, 3.875, 3.878, 3.880, and repealing 3.881 of the Medford Code pertaining to Parks System Development Charges.

40.2 COUNCIL BILL 2016-146 A resolution adopting the Area-Specific Parks System Development Charge fee methodology effective January 1, 2017.

### 50. Items Removed from Consent Calendar

### 60. Ordinances and Resolutions

60.1 COUNCIL BILL 2016-147 An ordinance awarding a contract in an amount of \$676,260 to Brown Contracting, Inc. to perform Americans with Disability Act ramp repairs and replacements.

60.2 COUNCIL BILL 2016-148 An ordinance adding sections 8.3100, 8.3105, 8.3110, 8.3115, 8.3120, 8.3125, 8.3130, 8.3135, 8.3140, and 8.3145 to the Medford Code to impose a three percent tax on the sale of marijuana items by a marijuana retailer.

60.3 COUNCIL BILL 2016-149 A resolution adopting the eighth Supplemental Budget for the 2015-17 biennium.

### 70. Council Business

70.1 Presentation of Council Retirement Plaques

70.2 Presentation of Council Officer Appreciation Plaques

70.3 Presentation of MURA Appreciation Plaques

### 80. City Manager and Other Staff Reports

80.1 MURA bonds payoff by Alison Chan

80.2 Further reports from City Manager

**90. Propositions and Remarks from the Mayor and Councilmembers**

90.1 Proclamations issued: None

90.2 Further Council committee reports

90.3 Further remarks from Mayor and Councilmembers

**100. Adjournment to the Executive Session**

**EXECUTIVE SESSION**

6:00 P.M.

**Executive Session pursuant to ORS 192.660(2)(a) to consider the employment of the chief executive officer, public officer, employee, or staff member.**

**EVENING SESSION**

7:00 P.M.

**Roll Call**

**110. Oral Requests and Communications from the Audience**

Comments will be limited to 3 minutes per individual or 5 minutes if representing a group or organization. PLEASE SIGN IN.

**120. Public Hearings**

Comments are limited to a total of 30 minutes for applicants and/or their representatives. You may request a 5-minute rebuttal time. Appellants and/or their representatives are limited to a total of 30 minutes and if the applicant is not the appellant they will also be allowed a total of 30 minutes. All others will be limited to 3 minutes per individual or 5 minutes if representing a group or organization. PLEASE SIGN IN.

120.1 Consider an appeal of the City Recorder's administrative decision pertaining to unlawful accumulation of household trash and junk located at 24 N. Orange Street.

120.2 COUNCIL BILL 2016-150 An ordinance amending section 10.1610 of the Medford Code to amend the portable sign provisions for the Central Business overlay district. DCA-16-121 (Legislative/Land Use)

120.3 COUNCIL BILL 2016-151 An ordinance amending sections 10.012, 10.337, and adding section 10.834 of the Medford Code to allow craft alcohol production in commercial zoning districts. DCA16-028 (Legislative/Land Use)

**130. Ordinances and Resolutions**

**140. Council Business**

**150. Further Reports from the City Manager and Staff**

**160. Propositions and Remarks from the Mayor and Councilmembers**

160.1 Further Council committee reports

160.2 Further remarks from Mayor and Councilmembers

**170. Adjournment**



# CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 40.1

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<b>DEPARTMENT:</b>	Parks & Recreation	<b>AGENDA SECTION:</b>	Consent Calendar
<b>PHONE:</b>	(541) 774-2483	<b>MEETING DATE:</b>	December 15, 2016
<b>STAFF CONTACT:</b>	Rich Rosenthal, Interim Parks & Recreation Director		

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## COUNCIL BILL 2016-145

An ordinance amending sections 3.870, 3.871, 3.874, 3.875, 3.878, 3.880, and repealing 3.881 of the Medford Code pertaining to Parks System Development Charges.

## SUMMARY AND BACKGROUND

An ordinance amending Sections 3.870, 3.871, 3.874, 3.875, 3.878, 3.880 and repealing 3.881 of the Medford municipal code pertaining to Parks System Development Charges (PSDCs) based on the recommendations contained in the Sept. 2016 FSC Group PSDC Update.

## PREVIOUS COUNCIL ACTIONS

On June 4, 2015, City Council approved Council Bill 2015-57 adopting the biennial budget, which contained the appropriation for the Leisure Services Plan and PSDC update process.

On September 8, 2016, the City Council was presented with the PSDC Update report compiled by FCS Group that included suggestions for revising the PSDC section of the municipal code.

On December 1, 2016, the City Council directed staff to prepare an ordinance amending municipal code pertaining to PSDCs and approved a new PSDC cost methodology.

## ANALYSIS

Section 3 of the Sept. 2016 PSDC Update compiled by FCS Group recommended the following changes to the municipal code pertaining to PSDC implementation and administration:

- Removal of several references to a specific methodology (MMC 3.870, 3.874, 3.875, 3.880). The PSDC specialists contend, and staff concurs, that referencing a specific PSDC methodology in the code requires unnecessary revision to the code each time the PSDC is updated, and such reference is more appropriately listed via a Council-approved resolution.
- Addition of language authorizing the City Council to adopt methodologies by resolution (MMC 3.870).
- Deletion of a time limit for expending PSDC revenues (MMC 3.881).

Additionally, staff recommends revision to MMC 3.880(1) to reflect PSDC methodology will be reviewed every five years.

## FINANCIAL AND/OR RESOURCE CONSIDERATIONS

The average PSDC collection since 2012 is approximately \$1 million per fiscal year. The FY16 collection was \$1.375 million. The 2016-25 Capital Facilities Plan contains \$52,832,500 in PSDC-eligible costs.

## TIMING ISSUES

Staff has identified Jan. 1, 2017 as a logical effective date for PSDC code changes to coincide with the area-specific cost methodology.

## COUNCIL OPTIONS

Approve, modify or deny the ordinance.



**CITY OF MEDFORD**  
**AGENDA ITEM COMMENTARY**

Item No: 40.1

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**STAFF RECOMMENDATION**

Staff recommends approval of the ordinance.

**SUGGESTED MOTION**

I move to approve the revisions to the municipal code pertaining to Parks System Development Charges.

**EXHIBITS**

Ordinance

FCS Group Final Report for Parks System Development Charge Update – Section 3

ORDINANCE NO. 2016-145

AN ORDINANCE amending sections 3.870, 3.871, 3.874, 3.875, 3.878, 3.880, and repealing 3.881 of the Medford Code pertaining to Parks System Development Charges.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

Section 1. Section 3.870 of the Medford Code is amended to read as follows:

3.870 Scope and Purposes.

(1) New Development within Medford contributes to the need for capacity increases and upgrades to capital improvements for facilities and, therefore, New Development should contribute to the funding for such capital improvements. This SDC will fund a portion of the needed capacity increases for facilities as identified in the "~~Parks and Recreation System Development Charges Methodology Update~~", dated January 19, 2006. **Leisure Services Plan.**

\*\*\*

(3) ~~The City hereby adopts the report entitled "Parks and Recreation System Development Charges Methodology Update", dated January 19, 2006, and incorporates herein by this reference the assumptions, conclusions and findings in the report which refer to the determination of costs of capital improvements and the portion of costs for these capital improvements that is attributable to growth. This report is hereinafter referred to as "SDC Methodology Report." The City may from time to time amend the SDC Methodology Report by Resolution to reflect changes in the costs of materials, labor, or real property.~~

Section 2. Section 3.871 of the Medford Code is amended to read as follows:

3.871 Definitions.

(1) "Administrator" means the City of Medford Parks **and Recreation** Director.

\*\*\*

(14) ~~"SDC Methodology Report" means that report entitled "Parks and Recreation System Development Charges Methodology Update", dated January 19, 2006.~~

Section 3. Section 3.874 of the Medford Code is amended to read as follows:

3.874 SDC Credits.

\*\*\*

(6) Notwithstanding any other provision of this ordinance, the City may, by action of the City Council, provide a greater credit, establish a system providing for the transferability of credits, provide a credit for a capital improvement not identified in the ~~SDC Methodology Report~~ or CIP, or provide a share of the cost of a capital improvement by means other than a credit, including the process that credits in excess of the Parks SDC may be paid in cash to the developer upon completion and acceptance of the facilities and authorization by the City Council.

Section 4. Section 3.875 of the Medford Code is amended to read as follows:

3.875 Alternative Calculation for SDC Rate, Credit, or Exemption.

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(b) The Applicant believes that property taxes paid by the property subject to development are, or will be, more than is provided by any credit for tax payments ~~which may be included in the SDC Methodology Report~~, and for that reason, the Applicant's SDC should be lower than that calculated by the City.

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(2) Alternative SDC Rate Request:

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(c) The Administrator shall apply the Alternative SDC Rate if, in the Administrator's opinion, the following are found:

\*\*\*

(iii) The proposed alternative SDC rate better or more realistically reflects the actual impact of the New Development ~~than the rate set forth in the SDC Methodology Report~~.

\*\*\*

Section 5. Section 3.878 of the Medford Code is amended to read as follows;

3.878 Dedicated Accounts and Appropriate Use of Accounts.

(1) All monies derived from Improvement Fee SDCs shall be placed in SDC Improvement Fee accounts and shall be used solely for the purpose of providing capacity-increasing capital improvements ~~as identified in the SDC Methodology Report~~ and the City's adopted capital improvement plans, and for eligible compliance and administrative costs. In this regard, these SDC revenues may be used for purposes that include, but are not limited to:

\*\*\*

Section 6. Section 3.880 of the Medford Code is amended to read as follows:

3.880 City Review of SDC.

(1) ~~The City shall undertake a review of the SDC Methodology Report three (3) years after the date of initial enactment; thereafter, the City shall undertake a review of the SDC Methodology Report every five (5) years.~~

(2) In the event that during the review referred to above, it is determined that an adjustment to the SDC is necessary for sufficient funding of **the adopted capital improvements, or to ensure that such improvements are not over funded by the SDC**, ~~listed in the SDC Methodology Report, or to ensure that such improvements are not over funded by the SDC~~, the City Council may propose and adopt by Resolution appropriately adjusted SDC rates.

Section 7. Section 3.881 of the Medford Code is hereby repealed:

~~3.881—Time Limit on Expenditure of SDCs.~~

~~The City shall expend SDC revenues within ten (10) years of receipt.~~

PASSED by the Council and signed by me in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

APPROVED \_\_\_\_\_, 2016.

\_\_\_\_\_  
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.

## SECTION 3: IMPLEMENTATION

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This section addresses two aspects of implementing an SDC. The first is a set of recommended code changes. The second is a method of accounting for inflation between SDC updates.

### CODE CHANGES

We recommend that the city enact the following changes to the MMC concurrently with the adoption of this SDC methodology.

#### References to a Specific Methodology

We recommend the removal of references to a specific methodology as present in MMC 3.870(1) and in several other locations in City code. We further recommend the addition of language authorizing the City Council to adopt methodologies by resolution.

#### Time Limit on Expenditures

We recommend the repeal of MMC 3.881. A time limit for spending SDC revenues is not required by statute, and we find that such a limit reduces the City's flexibility.

### ANNUAL INDEXING

ORS 223.304 allows for the periodic indexing of system development charges for inflation, as long as the index used is:

- (A) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;
- (B) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
- (C) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.

We have reviewed the indexing practice described in MMC 3.872, and we find that it meets the requirements of statute. We recommend that the City implement this practice.



# CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 40.2

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**DEPARTMENT:** Parks & Recreation      **AGENDA SECTION:** Consent Calendar  
**PHONE:** (541) 774-2483      **MEETING DATE:** December 15, 2016  
**STAFF CONTACT:** Rich Rosenthal, Interim Parks & Recreation Director

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## **COUNCIL BILL 2016-146**

A resolution adopting the Area-Specific Parks System Development Charge (PSDC) fee methodology effective January 1, 2017.

## **SUMMARY AND BACKGROUND**

A resolution adopting the Area-Specific PSDC fee methodology effective January 1, 2017.

## **PREVIOUS COUNCIL ACTIONS**

On September 16, 1993, City Council approved Resolution 7465 authorizing establishment of PSDCs.

On January 19, 2006, City Council approved Council Bill 2006-14 amending municipal PSDC code and authorizing a PSDC increase.

On April 2, 2009, City Council approved Council Bill 2009-79 revising PSDC methodology effective May 1, 2009.

On March 7, 2013, City Council approved Council Bill 2013-041 adopting the Southeast Area Plan that included Policy 3-E, "City of Medford shall seek to expend parks system development charges collected within the SE Area on park-related improvements within the same SE Area."

On June 4, 2015, City Council approved Council Bill 2015-57 adopting the biennial budget, which contained the appropriation for the LSP and PSDC update process.

On January 14, 2016, the City Council provided direction on the framework for a PSDC update. City Council heard technical analysis and discussed PSDC methodology options during study sessions on May 26, 2016 and Sept. 8, 2016.

On October 20, 2016, City Council approved Council Bill 2016-130 initiating a minor amendment to the City's Comprehensive Plan to include the 2016-25 LSP, including the 10-year Capital Facilities Plan.

On December 1, 2016, City Council approved the Area-Specific PSDC cost methodology based on the 2016 FCS Group report.

## **ANALYSIS**

Section 3.87 of the municipal code outlines the process and procedures for implementing and administering PSDCs. The code references PSDCs are to be adopted via City Council resolution.

On December 1, 2016, City Council considered two cost methodologies and selected the Area-Specific cost. The proposed resolution codifies this selection, effective January 1, 2017.

Current PSDCs have been in place since May 2010, and the revision of PSDCs is one of the final elements in the 2016-25 Leisure Services Plan update process. The City contracted with FCS Group to update PSDC methodology and to document proposed calculations.



# CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 40.2

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PSDCs are charged to new construction development and generate capital to expand capacity for parks, trails and facilities that are outlined in the 10-year Capital Facilities Plan section of the LSP. The project list was developed through extensive community input.

The Area-Specific cost methodology establishes PSDC rates specific to the Southeast Area and a standard rate for the remainder of Medford as follows:

Category	Current PSDC	SE Area	Non-SE Area
Single Family dwelling unit	\$ 3,433	\$ 3,679	\$ 3,210
Multi-Family dwelling unit	\$ 2,533	\$ 3,111	\$ 2,714
Mobile Home	\$ 2,273	\$ 4,120	\$ 3,595
Accessory Dwelling (Per Unit)	\$ 1,716	\$ 2,122	\$ 1,851
Assisted Living dwelling unit	\$ 2,533	\$ 3,111	\$ 2,714
Employee (Per Employee)	\$ 85	\$ 235	\$ 205

The Area-Specific approach allows a community to maximize benefit of a strong construction market in a particular area. The Area-Specific cost methodology outlined in the FCS document would also allow 40 percent of PSDCs to be expended outside of the designated area for a “special use area,” such as an aquatics facility or a recreation center.

### FINANCIAL AND/OR RESOURCE CONSIDERATIONS

The average PSDC collection since 2012 is approximately \$1 million per fiscal year. The FY16 collection was \$1.375 million. The 2016-25 Capital Facilities Plan contains \$52,832,500 in PSDC-eligible costs.

### TIMING ISSUES

Staff identified January 1, 2017 as the traditional start date for new PSDC rates.

### COUNCIL OPTIONS

Approve, amend or deny the resolution.

### STAFF RECOMMENDATION

Staff recommends approval of the resolution.

### SUGGESTED MOTION

I move to approve the resolution adopting the Area-Specific PSDCs.

### EXHIBITS

Resolution

FCS Group Final Report for Parks System Development Charge Update

RESOLUTION NO. 2016-146

A RESOLUTION adopting the Area-Specific Parks System Development Charge fee methodology effective January 1, 2017.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDFORD, OREGON:

That the Area-Specific Parks System Development Charge fee methodology effective January 1, 2017 is hereby adopted as follows:

Category	SE Area	Non-SE Area
Single Family dwelling unit	\$ 3,679	\$ 3,210
Multi-Family dwelling unit	\$ 3,111	\$ 2,714
Mobile Home	\$ 4,120	\$ 3,595
Accessory Dwelling (Per Unit)	\$ 2,122	\$ 1,851
Assisted Living dwelling unit	\$ 3,111	\$ 2,714
Employee (Per Employee)	\$ 235	\$ 205

PASSED by the Council and signed by me in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

City of Medford, Oregon



Final Report for  
PARKS SYSTEM  
DEVELOPMENT CHARGE  
UPDATE

September, 2016

**FCS GROUP**  
Building 1, Suite 220  
4000 Kruse Way Place  
Lake Oswego, OR 97035  
503.841.6543

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## SECTION 1: INTRODUCTION

This section describes the project scope and policy context upon which the body of this report is based.

### PROJECT

The City of Medford (“City”) last updated its parks system development charge (SDC) methodology in 2009.<sup>1</sup> The City’s parks SDCs were last adjusted in 2010, as shown below:

Continuous Improvement  
Customer Service



**MEDFORD PARKS AND RECREATION DEPARTMENT**  
**SYSTEM DEVELOPMENT CHARGES**

As of May 1, 2010 the following rates will be in place.

Single Family Dwelling Unit:	\$3,433.00
Multi-Family Dwelling Unit: (one or more attached units)	\$2,533.00 (rate times # of units)
Mobile Home Park	\$2,273.00 (rate times # of units)
Accessory Dwelling Unit (unit added to existing single family unit)	\$1,716.00
Assisted Living	\$2,533.00
Employee Cost – Commercial	\$85.00 (rate times # of employees)

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<sup>1</sup> Don Ganer & Associates, “Parks and Recreation System Development Charges Methodology Update,” January 27, 2009.

In September, 2015, the City engaged Conservation Technix to update the City's Leisure Services Plan. As part of that effort, the City engaged FCS GROUP to update the City's parks SDC methodology and develop a funding plan for the updated Leisure Services Plan.

We approached this project as a series of three steps:

- **Framework for Charges.** In this step, we worked with City staff to identify and agree on the approach to be used and the components to be included in the analysis. As part of this step, we met with the City Council by telephone on January 14, 2016.
- **Technical Analysis.** In this step, we worked with City staff to isolate the recoverable portion of facility costs and calculate draft SDC rates. As part of this step, we met with City Council on May 26, 2016, to communicate initial analytic results. We then met with City staff on July 29, 2016, to refine the analysis.
- **Draft Methodology Report Preparation.** In this step, we documented the calculation of the draft SDC rates included in this report.

## POLICY

SDCs are enabled by state statute and authorized by local ordinance.

### State Statutes

Oregon Revised Statutes ("ORS") 223.297 to 223.314 enable local governments to establish SDCs, which are one-time fees on new development that are paid at the time of development. SDCs are intended to recover a fair share of the cost of existing and planned facilities that provide capacity to serve future growth.

ORS 223.299 defines two types of SDC:

- A reimbursement fee that is designed to recover "costs associated with capital improvements already constructed, or under construction when the fee is established, for which the local government determines that capacity exists"
- An improvement fee that is designed to recover "costs associated with capital improvements to be constructed"

ORS 223.304(1) states, in part, that a reimbursement fee must be based on "the value of unused capacity available to future system users or the cost of existing facilities" and must account for prior contributions by existing users and any gifted or grant-funded facilities. The calculation must "promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities." A reimbursement fee may be spent on any capital improvement related to the system for which it is being charged (whether cash-financed or debt-financed).

ORS 223.304(2) states, in part, that an improvement fee must be calculated to include only the cost of projected capital improvements needed to increase system capacity for future users. In other words, the cost of planned projects that correct existing deficiencies or that do not otherwise increase capacity for future users may not be included in the improvement fee calculation. An improvement fee may be spent only on capital improvements (or portions thereof) that increase the capacity of the system for which it is being charged (whether cash-financed or debt-financed).

### Local Ordinance

Medford Municipal Code ("MMC") 3.870 to 3.883 authorizes the imposition of parks SDCs in Medford. The provisions of these sections are within the limits specified by statute. However, we

have identified some opportunities to improve these sections of code. We describe these opportunities in detail in Section 3.

## SECTION 2: ANALYSIS

This section provides our detailed calculations of the maximum defensible parks SDC.

In general, SDCs are calculated by adding a reimbursement fee component (if applicable) and an improvement fee component—both with potential adjustments. Each component is calculated by dividing the eligible cost by growth in units of demand. The unit of demand becomes the basis of the charge.

### GROWTH

The City’s park system serves both the residents and employees of Medford. We therefore define growth for the parks SDC as a combination of growth in total population and growth in employment during the planning period.

### Current Demand

The calculation of growth begins with the most recent counts for population and employment in Medford. As shown in Table 2.1, 77,655 residents live in Medford, and 43,437 employees work in Medford. Of these, 15,514 people both live and work in Medford.

	Living inside Medford	Living outside Medford	Total
Working inside Medford	15,514	27,923	43,437
Working outside Medford	12,502		
Not working	49,639		
<b>Total</b>	<b>77,655</b>		

Source: 2016-2025 Medford Leisure Services Plan, page 11 (total living inside Medford); U. S. Census Bureau, OnTheMap Application, accessed from <http://onthemap.ces.census.gov/> on May 5, 2016.

Next, we calculate the relative demand of residents and employees. To do that, we estimate the number of hours of potential park use for each of the two groups, as shown in Tables 2.2 and 2.3.

	Living inside Medford	Living outside Medford
Working inside Medford	72	
Working outside Medford	72	
Not working	112	

Source: FCS GROUP.

	Living inside Medford	Living outside Medford
Working inside Medford	15	15
Working outside Medford		
Not working		

Source: FCS GROUP and City staff.

When the hours per week of potential park demand are multiplied by the counts from Table 2.1, we are able to determine the relative demand of residents and employees. As shown in Table 2.4, one employee is equivalent to 0.15 resident.

	Residential Hours	Non-Residential Hours	Total Hours
Working inside Medford	1,117,008	651,555	1,768,563
Working outside Medford	900,144		900,144
Not working	5,559,568		5,559,568
<b>Total</b>	<b>7,576,720</b>	<b>651,555</b>	<b>8,228,275</b>
Hours per resident	98		
Hours per employee		15	
Residents per employee			0.15

Source: Previous tables.

## Future Demand

Based on the growth assumptions in the “2016-2025 Medford Leisure Services Plan,” we calculate the growth in residents and employees over the 10-year planning period. Because each employee is equivalent to 0.15 residents, we can combine these growth calculations into the single category of residential equivalents, as shown in Table 2.5.

	2015	2016	2026	Growth from 2016 to 2026
Population	77,655	80,220	111,025	30,805
Employees	43,437	44,872	62,103	17,231
Residential equivalents	84,333	87,119	120,573	33,454

Source: 2016-2025 Medford Leisure Services Plan, page 10 (population in 2026); previous tables. **Note:** The implied annual growth rate for population from 2015 (77,655 residents) to 2026 (111,025 residents) is 3.30 percent. We used this growth rate to interpolate population and employees for 2016.

The City has expressed a desire to calculate not only parks SDCs that can be charged uniformly throughout the city, but also parks SDCs that vary by geography. Specifically, the City has requested calculations for two areas: (1) the southeast area of the city and (2) the rest of the city. Based on data provided by the City, we allocate growth as shown in Table 2.6.

	2016	2026	Growth from 2016 to 2026	Portion of Growth
<b>Southeast area</b>				
Population	1,064	13,910	12,846	41.70%
Employees	30	392	362	2.10%
Residential equivalents	1,069	13,970	12,902	38.57%
<b>Rest of city</b>				
Population	79,156	97,115	17,959	58.30%
Employees	44,842	61,711	16,869	97.90%
Residential equivalents	86,050	106,602	20,552	61.43%

Source: E-mail from Chris C. Olivier, 05/16/2016 (2016 population and employees in southeast area); e-mail from John K. Adam, 05/16/2016 (2026 population in Southeast area).

## LEVEL OF SERVICE AND ELIGIBILITY

Determining what portion of which costs can be legally recovered in an SDC begins with determining the level of service (LoS) that is currently being achieved for each type of facility (i.e., category of park). That LoS can then be compared with the City’s standards to determine if a deficiency or surplus exists. Table 2.7 presents both the current level of service and the City standard for each type of facility. In the case of special use areas, which do not have an adopted standard, we considered the current LoS to be the standard.

Unit of measurement	Neighborhood Parks acre	Community Parks acre	Natural Areas acre	Paved Paths mile	Unpaved Trails mile	Special Use Areas acre
<b>Inventory</b>						
Land	127.08	247.95	1,977.59	38.14	11.44	59.28
Developed facilities	93.81	226.54		38.14	11.44	39.28
<b>Current level of service per 1,000 residents</b>						
Land	1.64	3.19	25.47	0.49	0.15	0.76
Developed facilities	1.21	2.92		0.49	0.15	0.51
<b>Standard level of service, existing</b>						
Land per 1,000 residents	1.56	2.75	20.00	0.27	0.19	0.76
Developed facilities per 1,000 residents	1.56	2.75		0.27	0.19	0.51

Source: 2016-2025 Medford Leisure Services Plan.

## Deficiencies

The City’s inventory of park facilities is deficient in two categories:

- Developed neighborhood parks (achieved LoS of 1.21 acres per 1,000 residents, which is below the standard of 1.56 acres per 1,000 residents)
- Unpaved trails (achieved LoS of 0.15 mile per 1,000 residents, which is below the standard of 0.19 mile per 1,000 residents)

As a result of these deficiencies, planned projects in these categories will not be 100 percent eligible for SDC funding.

## Surpluses

The City’s inventory of park facilities exceeds its standards in several categories:

- Neighborhood park land (achieved LoS of 1.64 acres per 1,000 residents, which is above the standard of 1.56 acres per 1,000 residents)
- Community parks (Achieved LoS for both land and developed facilities is above standard.)
- Natural areas (achieved LoS of 25.47 acres per 1,000 residents, which is above the standard of 20.00 acres per 1,000 residents)
- Paved paths (achieved LoS of 0.49 mile per 1,000 residents, which is above the standard of 0.27 mile per 1,000 residents)

These surpluses create a potential opportunity for a reimbursement fee.

Table 2.8 summarizes the impacts of deficiencies and surpluses on SDC eligibility:

Unit of measurement	Neighborhood Parks acre	Community Parks acre	Natural Areas acre	Paved Paths mile	Unpaved Trails mile	Special Use Areas acre
<b>Standard level of service, existing</b>						
Required inventory in 2016						
Land per 1,000 residents	121.14	213.55	1,553.10	20.97	14.75	59.28
Developed facilities per 1,000 residents	121.14	213.55	0.00	20.97	14.75	39.28
Required inventory in 2026						
Land per 1,000 residents	173.20	305.32	2,220.50	29.98	21.09	84.75
Developed facilities per 1,000 residents	173.20	305.32	0.00	29.98	21.09	56.16
<b>Improvement fee eligibility</b>						
Land	100.00%	100.00%	100.00%	100.00%	65.69%	100.00%
Developed facilities	65.57%	100.00%		100.00%	65.69%	100.00%
<b>Reimbursement fee eligibility</b>						
Land	5.94	34.40	424.49	17.17	0.00	0.00
Developed facilities	0.00	12.99	0.00	17.17	0.00	0.00

Source: 2016-2025 Medford Leisure Services Plan.

## REIMBURSEMENT FEE

The reimbursement fee is the cost of available capacity per unit of growth that such available capacity will serve. In order for a reimbursement fee to be calculated, unused capacity in the existing

park system must be available to serve future growth. For facility types that do not have excess capacity, no reimbursement fee may be charged.

Although Table 2.8 shows that several acres and miles of park facilities are eligible for reimbursement, we have not calculated a reimbursement fee for two reasons. First, the City was able to produce historical cost data for only a fraction of the eligible types of facilities. Second, the City has \$29 million in remaining debt service for outstanding parks-related debt. The outstanding principal from this debt would have to be deducted from a reimbursement fee cost basis. Because of the limited cost data and the prospect of a large deduction for outstanding debt, we agreed with City staff that a reimbursement fee was not worth pursuing further.

## IMPROVEMENT FEE

The improvement fee is the cost of capacity-increasing capital projects per unit of growth that those projects will serve. The unit of growth becomes the basis of the fee. In reality, the capacity added by many projects serves a dual purpose of both meeting existing demand and serving future growth. To compute a compliant SDC rate, growth-related costs must be isolated, and costs related to current demand must be excluded.

We have used the capacity approach to allocate costs to the improvement fee basis.<sup>1</sup> Under this approach, the cost of a given project is allocated to growth by the portion of total project capacity that represents capacity for future users. That portion, sometimes known as the improvement fee eligibility percentage, is multiplied by the total project cost to determine that project's improvement fee cost basis.

Calculation of the improvement fee begins with the estimated costs of the City's list of growth-related parks projects. For each project, we then apply the improvement fee eligibility percentage shown for that project's category in Table 2.8. This percentage represents the proportion of each project that will serve growth in Medford. For the southeast area of Medford, the total eligible cost is \$19.7 million, as shown in Table 2.9.

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<sup>1</sup> Two alternatives to the capacity approach are the incremental approach and the causation approach. The incremental approach is computationally complicated, because it requires the computation of hypothetical project costs to serve existing users. Only the incremental cost of the actual project is included in the improvement fee cost basis. The causation approach, which allocates 100 percent of all growth-related projects to growth, is vulnerable to legal challenge.

<b>Table 2.9: Planned Projects, Southeast Area</b>						
<b>Area</b>	<b>Eligibility Category</b>	<b>First Fiscal Year</b>	<b>Improvement Cost</b>	<b>Fee Eligibility</b>	<b>Eligible Cost</b>	
Trail segment 1 (class G3)	Unpaved trails, development		\$ 476,736	65.69%	\$	313,152
Trail segment 2 (class G3)	Unpaved trails, development		623,168	65.69%		409,339
Trail segment 3 (class G4)	Unpaved trails, development		313,664	65.69%		206,036
Trail segment 4 (class G2)	Unpaved trails, development		460,928	65.69%		302,769
Trail segment 5 (class G4)	Unpaved trails, land		217,910	65.69%		143,138
Trail segment 5 (class G4)	Unpaved trails, development		235,456	65.69%		154,663
Trail segment 6 (class G1)	Unpaved trails, development		809,536	65.69%		531,758
Trail segment 7 (class )	Unpaved trails, land		38,500	65.69%		25,289
Trail segment 7 (class )	Unpaved trails, development		6,000	65.69%		3,941
Trail segment 8 (class )	Unpaved trails, land		88,550	65.69%		58,166
Trail segment 8 (class )	Unpaved trails, development		13,800	65.69%		9,065
Trail segment 9 (class G1)	Unpaved trails, development		987,584	65.69%		648,712
SE Area Plan Park Development	Neighborhood parks, development		-	65.57%		-
SE Area Plan - Larson Creek Corridor	Paved paths, development	2022	1,390,000	100.00%		1,390,000
SE Area Plan - Tributary to Medford Canal	Paved paths, development	2023	1,570,000	100.00%		1,570,000
Neighborhood Park - SE Medford	Neighborhood parks, land	2019	1,020,000	100.00%		1,020,000
Community Park - SE Medford	Community parks, land	2019	4,875,000	100.00%		4,875,000
Neighborhood Park - SE Medford	Neighborhood parks, land	2022	1,074,647	100.00%		1,074,647
Neighborhood Park - SE Medford	Neighborhood parks, land	2025	750,000	100.00%		750,000
Multi-Use Recreation & Aquatic Center	Special use areas, development	2019	6,176,573	100.00%		6,176,573
<b>Total</b>			<b>\$ 21,128,052</b>			<b>\$ 19,662,248</b>

Source: 2016-2025 Medford Leisure Services Plan, Capital Facilities Plan.

For the rest of Medford, the total eligible cost is \$27.4 million, as shown in Table 2.10.

<b>Table 2.10: Planned Projects, Rest of City</b>						
<b>Area</b>	<b>Eligibility Category</b>	<b>First Fiscal Year</b>	<b>Improvement Cost</b>	<b>Fee Eligibility</b>	<b>Eligible Cost</b>	
Donahue-Frohnmayr Park Expansion & Upgrades	Neighborhood parks, development	2022	\$ 2,100,000	65.57%	\$	1,377,026
Oregon Hills Park, Phase II	Neighborhood parks, development	2019	310,000	65.57%		203,275
Chrissy Park Development	Neighborhood parks, development	2018	3,790,000	65.57%		2,485,204
Cedar Links Park Development	Neighborhood parks, development	2019	1,400,000	65.57%		918,017
Howard School Park	Neighborhood parks, development	2022	1,844,000	65.57%		1,209,160
Midway Park Development	Neighborhood parks, development	2020	1,100,000	65.57%		721,299
Lone Pine Park Development	Neighborhood parks, development	2024	200,000	65.57%		131,145
Prescott Park Trail Development	Unpaved trails, development	2020	1,750,000	65.69%		1,149,518
Neighborhood Park - N Medford	Neighborhood parks, land	2018	1,625,000	100.00%		1,625,000
Community Park - W Medford	Community parks, land	2020	2,320,000	100.00%		2,320,000
Neighborhood Park - E Medford	Neighborhood parks, land	2021	741,935	100.00%		741,935
Neighborhood Park - SW Medford	Neighborhood parks, land	2023	1,350,000	100.00%		1,350,000
Neighborhood Park - SW Medford	Neighborhood parks, land	2024	1,350,000	100.00%		1,350,000
Multi-Use Recreation & Aquatic Center	Special use areas, development	2019	11,823,427	100.00%		11,823,427
<b>Total</b>			<b>\$ 31,704,363</b>			<b>\$ 27,405,009</b>

Source: 2016-2025 Medford Leisure Services Plan, Capital Facilities Plan.

The Multi-Use Recreation & Aquatic Center is a single project with citywide benefit. We therefore allocated its cost (\$18 million in total) to the two areas according to the proportion of expected growth in residential equivalents.

Table 2.11 summarizes the eligible and ineligible project costs in the entire city.

Costs	Southeast Area		Total
	Area	Rest of City	
Eligible costs	\$ 19,662,248	\$ 27,405,009	\$ 47,067,257
Ineligible costs	1,465,804	4,299,353	5,765,157
<b>Total project costs</b>	<b>\$ 21,128,052</b>	<b>\$ 31,704,363</b>	<b>\$ 52,832,414</b>

Source: Previous tables.

## ADJUSTMENTS

Two cost basis adjustments are potentially applicable to both reimbursement and improvement fees: fund balance and compliance costs.

### Fund Balance

To the extent that SDC revenue is currently available in a fund balance, that revenue should be deducted from its corresponding cost basis. Because we are calculating only an improvement fee, we have made only one adjustment for the City’s SDC fund balance of \$1 million. For area-specific calculations, we allocated the fund balance according to each area’s proportion of growth in residential equivalents. This is the same method we used for allocating the cost of the Multi-Use Recreation & Aquatic Center.

### Compliance Costs

ORS 223.307(5) authorizes the expenditure of SDCs on “the costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.” To avoid spending monies for compliance that might otherwise have been spent on growth-related projects, this report includes an estimate of compliance costs in its SDCs.

In a manner consistent with the previous SDC methodology, we have estimated compliance costs of 2.135 percent of the improvement fee cost basis (whether the cost basis is uniform or area-specific).

## CALCULATED SDCS

Having determined eligible costs and adjustments, we then divide by growth in residential equivalents to determine the improvement fee per residential equivalent. Table 2.12 shows this calculation for both a uniform SDC that would be charged citywide and area-specific SDCs.

	Area Specific, Southeast Area		
	Uniform	Area	Area Specific, Rest of City
Reimbursement fee cost basis	\$ -	\$ -	\$ -
Improvement fee cost basis	47,067,257	19,662,248	27,405,009
Compliance costs	1,004,886	419,789	585,097
Less fund balance	(1,000,000)	(385,655)	(614,345)
<b>Total cost basis</b>	<b>\$ 47,072,143</b>	<b>\$ 19,696,382</b>	<b>\$ 27,375,761</b>
Growth in residential equivalents	33,454	12,902	20,552
<b>SDC per residential equivalent</b>	<b>\$ 1,407</b>	<b>\$ 1,527</b>	<b>\$ 1,332</b>

Source: Previous tables and previous SDC methodology (compliance costs as a function of improvement fee cost basis).

The final analytic step is to convert the SDCs per residential equivalent into the categories of land use that appear in the City’s fee schedule. Table 2.13 shows the resulting proposed fee schedule.

**Table 2.13: Proposed SDC Schedule**

Proposed SDC Schedule	Residential		Area Specific, Southeast Area		Area Specific, Rest of City	
	Equivalents	Uniform				
Single-family dwelling unit	2.41	\$ 3,391	\$	3,679	\$	3,210
Multi-family dwelling unit	2.04	2,867		3,111		2,714
Mobile home park unit	2.70	3,797		4,120		3,595
Accessory dwelling unit	1.39	1,956		2,122		1,851
Assisted living dwelling unit	2.04	2,867		3,111		2,714
Employee	0.15	216		235		205

Source: U. S. Census Bureau, 2014 American Community Survey 1-Year Estimates, tables B25024 and B25033; Jordan Palmeri, *Accessory Dwelling Units in Portland, Oregon*, 06/01/2014; previous tables.

## SECTION 3: IMPLEMENTATION

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This section addresses two aspects of implementing an SDC. The first is a set of recommended code changes. The second is a method of accounting for inflation between SDC updates.

### CODE CHANGES

We recommend that the city enact the following changes to the MMC concurrently with the adoption of this SDC methodology.

#### References to a Specific Methodology

We recommend the removal of references to a specific methodology in MMC 3.870(3) and 3.871(14). We further recommend the addition of language authorizing the City Council to adopt methodologies by resolution.

#### Time Limit on Expenditures

We recommend the repeal of MMC 3.881. A time limit for spending SDC revenues is not required by statute, and we find that such a limit reduces the City's flexibility.

### ANNUAL INDEXING

ORS 223.304 allows for the periodic indexing of system development charges for inflation, as long as the index used is:

- (A) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;
- (B) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
- (C) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.

We have reviewed the indexing practice described in MMC 3.872, and we find that it meets the requirements of statute. We recommend that the City implement this practice.



**CITY OF MEDFORD**  
**AGENDA ITEM COMMENTARY**

Item No: 60.1

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**DEPARTMENT:** Public Works

**AGENDA SECTION:** Ordinances and Resolutions

**PHONE:** (541) 774-2100

**MEETING DATE:** December 15, 2016

**STAFF CONTACT:** Cory Crebbin, Public Works Director

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**COUNCIL BILL 2016-147**

An ordinance awarding a contract in an amount of \$676,260 to Brown Contracting, Inc. to perform Americans with Disability Act ramp repairs and replacements.

**SUMMARY AND BACKGROUND**

Brown Contracting, Inc. is the low bidder for a contract to perform Americans with Disability Act (ADA) Ramp repairs and replacements on various streets scheduled to receive asphalt overlays. The City contracts for some concrete maintenance when it exceeds the capacity of Public Works crews.

Recent federal guidance was issued defining a street overlay as an “alteration” requiring installation or replacement of sidewalk ramps when work is performed. Accomplishing this concrete work with a separate contract should result in lower costs for this work and the asphalt overlays scheduled for summer 2017.

**PREVIOUS COUNCIL ACTIONS**

Roxy Ann Rock was awarded a contract on December 17, 2015, for 186 ramps that were installed during the period of January through July 2016.

**ANALYSIS**

A total of 123 ramps will be installed as shown on the exhibit “Special Provisions: Work To Be Done.” This work is necessary to meet the federal requirement that ADA ramps must be installed or upgraded to meet ADA standards when a street is overlaid.

**FINANCIAL AND/OR RESOURCE CONSIDERATIONS**

Expenditure of \$676,260.00, which is included in the 2016/2017 budget for the Street Utility Fund (Fund 24).

**TIMING ISSUES**

The work will start after January 9, 2017, and is scheduled to be complete by April 14, 2017.

**COUNCIL OPTIONS**

Approve, modify or deny the ordinance.

**STAFF RECOMMENDATION**

Approve the ordinance for a contract with Brown Contracting, Inc.

**SUGGESTED MOTION**

I move to approve the ordinance for a contract in the amount of \$676,260.00 to Brown Contracting, Inc., for ADA Ramps.

**EXHIBITS**

Ordinance

Bid Tabulation

Special Provisions: Work To Be Done

Contract documents are available in the City Recorder’s office

ORDINANCE NO. 2016-147

AN ORDINANCE awarding a contract in an amount of \$676,260 to Brown Contracting, Inc. to perform Americans with Disability Act ramp repairs and replacements.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

That a contract in an amount of \$676,260 to perform Americans with Disability Act ramp repairs and replacements, which is on file in the City Recorder's office, is hereby awarded to Brown Contracting, Inc.

PASSED by the Council and signed by me in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

APPROVED \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

**BID TABULATIONS ADA Ramps 2017 in the City of Medford**

**Project; ADA Ramps 2017 in the City of Medford**  
**Location: Various Streets in the City of Medford**  
**Project No: MS-1706**  
**Date of Bid Opening: November 22, 2016**

**CITY OF MEDFORD**  
**PUBLIC WORKS - OPERATIONS**

**Peter Brown**  
**Public Works Operations**  
**Engineering Tech III**



<b>Bidder Name</b>	<b>Total Bid</b>
Brown Contracting Inc.	<b>\$676,260.00</b>
Roxy Ann Rock	\$710,595.00

Item No.	Item Description	Unit of Measure	Estimated Quantity	Low Bidder <b>Brown Contracting Inc.</b>		Roxy Ann Rock
				Unit Bid	Amount	Unit Bid
1	MOBILIZATION	LS	1	\$64,000.00	\$64,000.00	\$108,223.00
2	TEMPORARY WORK ZONE TRAFFIC CONTROL, COMPLETE	LS	1	\$12,480.00	\$12,480.00	\$48,724.00
3	TEMPORARY PEDESTRIAN ACCESS ROUTING	LS	1	\$5,000.00	\$5,000.00	\$8,377.00
4	EROSION CONTROL	LS	1	\$1,000.00	\$1,000.00	\$43,217.00
5	4 INCH ASPHALT CONCRETE PAVEMENT REPAIR	SQYD	220	\$175.00	\$38,500.00	\$116.27
6	6 INCH ASPHALT CONCRETE PAVEMENT REPAIR	SQYD	280	\$235.00	\$65,800.00	\$109.37
7	CONCRETE CURBS, CURB AND GUTTER	FOOT	2230	\$59.00	\$131,570.00	\$56.00
8	CONCRETE WALKS	SQFT	20600	\$8.75	\$180,250.00	\$13.75
9	STANDARD VALLEY GUTTER	SQYD	43	\$270.00	\$11,610.00	\$62.00
10	EXTRA FOR NEW SIDEWALK RAMPS	EACH	123	\$1,350.00	\$166,050.00	\$285.00
				<b>Total Bid =</b>	<b>\$676,260.00</b>	<b>\$710,595.00</b>

**SPECIAL PROVISIONS**

**WORK TO BE DONE**

The Work to be done under this Contract consists of removal of concrete sidewalks and curb and gutter and install 123 new ADA compliant ramps at various locations, in the City of Medford, Oregon.

1. Removal of concrete sidewalks and curb and gutter.
2. Install new concrete sidewalks and curb and gutter including ADA compliant ramps.
3. In accordance to pedestrian disruption limitations as stated on TM844.
4. Perform additional and incidental Work as called for by the Specifications and Plans.

This project includes work at the following locations:

	<b>Street</b>	<b>From</b>	<b>To</b>	<b>ADA Ramps to install</b>
1	Black Oak Dr	Siskiyou Blvd	Acorn Wy	<b>23</b>
2	Black Oak Dr	E Barnett Rd	Siskiyou Blvd	<b>9</b>
3	Crater Lake Ave	Forrest Hills Dr	Ford Dr	<b>1</b>
4	Eagle Trace Dr	140' N of Wolf Run Dr	Cypress Point Dr	<b>3</b>
5	N Holly St	W 4th St	W 6th St	<b>7</b>
6	N Holly St	W 2nd St	Haven St	<b>7</b>
7	S Holly St	Stewart Ave	100' N of Holmes Ave	<b>2</b>
8	S Holly St	W Barnett Rd	W 10th St	<b>20</b>
9	Jeanette Ave	Meadows Ln	Farr St	<b>2</b>
10	Kristen Dr	Argonne Ave	Tamara Cr	<b>4</b>
11	Merriman Rd	Debarr Ave	City Limits	<b>15</b>
12	Nieto Wy	Shannon Dr	Tamara Cr	<b>1</b>
13	Roberts Rd	Springbrook Rd	East End	<b>22</b>
14	Summit Ave	W Jackson St	W Clark St	<b>7</b>
			<b>Total</b>	<b>123</b>





**CITY OF MEDFORD**  
**AGENDA ITEM COMMENTARY**

Item No: 60.2

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**TIMING ISSUES**

None.

**COUNCIL OPTIONS**

Approve, modify, or deny the ordinance.

**STAFF RECOMMENDATION**

Staff recommends approval of the ordinance and accompanying exhibits.

**SUGGESTED MOTION**

I move to approve the ordinance.

**EXHIBITS**

Ordinance

ORDINANCE NO. 2016-148

AN ORDINANCE adding sections 8.3100, 8.3105, 8.3110, 8.3115, 8.3120, 8.3125, 8.3130, 8.3135, 8.3140, and 8.3145 to the Medford Code to impose a three percent tax on the sale of marijuana items by a marijuana retailer.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

Section 1. Section 8.3100 of the Medford Code is added to read as follows:

**8.3100 Definitions.**

**“Marijuana item” has the meaning given that term in Oregon Laws 2015, chapter 614, section 1.**

**“Marijuana retailer” means a person who sells marijuana items to a consumer in this state.**

**“Retail sale price” means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.**

Section 2. Section 8.3105 of the Medford Code is added to read as follows:

**8.3105 Tax Imposed.**

**As described in section 34a of House Bill 3400 (2015), the City of Medford hereby imposes a tax of three percent on the retail sale price of marijuana items by a marijuana retailer in an area subject to the jurisdiction of the city.**

Section 3. Section 8.3110 of the Medford Code is added to read as follows:

**8.3110 Collection.**

**(1) The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items. The tax collected by a marijuana retailer constitutes a debt owing to the City, and is due and payable to the City’s Finance Director on a monthly basis on or before the last day of the month immediately following for the preceding month.**

**(2) A marijuana retailer shall make a return to the Finance Director, on forms provided by the City, specifying the total sales and the amount of tax collected. At the time the return is filed, the full amount of the tax collected shall be remitted. For good cause shown, the Finance Director may extend the time for filing a return or paying the tax for not more than one (1) month. Any further extension may be granted only by the Council.**

Section 4. Section 8.3115 of the Medford Code is added to read as follows:

**8.3115 Alternative Collection Method; Penalties and Enforcement; Conflict of Laws.**

**(1) Pursuant to ORS 305.620, the Finance Director may enter into an intergovernmental agreement with the Oregon Department of Revenue to collect the 3 percent tax imposed under section 8.3105. Excepting sections 8.3120(2) and 8.3140 the terms and conditions of the IGA**

shall apply in lieu of this Ordinance.

(2) If the Finance Director enters into an intergovernmental agreement pursuant to this section, the provisions of ORS 475B.710, ORS 475B.715, and ORS 475B.755 shall apply to every marijuana retailer subject to this Ordinance.

(3) In the event of any conflict between the provisions of this Ordinance and the provisions of the intergovernmental agreement, the provisions of the intergovernmental agreement shall apply.

Section 5. Section 8.3120 of the Medford Code is added to read as follows:

#### **8.3120 Administration and Enforcement.**

(1) The Finance Director shall enforce the provisions of this Ordinance and shall have the power to adopt rules and regulations not inconsistent with this Ordinance as may be necessary to aid in its enforcement.

(2) Every Marijuana Retailer shall keep complete and accurate electronic records in an accounting format established by the Finance Director relating to the sale of marijuana items. All records shall be kept for a period of five (5) years. The Finance Director shall have the right to inspect such records at all reasonable times.

(3) If an extension is granted, a Marijuana Retailer shall pay interest at the rate of three (3) percent per month on the amount of the tax due, without proration for a fraction of a month. If a return is not filed and if the tax and interest due are not paid in full by the end of the extension period, the interest shall become part of the tax for computation of penalties prescribed in section 8.3125.

Section 6. Section 8.3125 of the Medford Code is added to read as follows:

#### **8.3125 Penalties & Interest.**

(1) Any Marijuana Retailer that fails to remit any portion of the tax imposed within the time required shall pay a penalty of ten (10) percent of the amount of the tax.

(2) Any Marijuana Retailer that fails to remit any delinquent remittance on or before a period of sixty days following the date on which the remittance became delinquent shall pay a second delinquency penalty of fifteen (15) percent of the amount of the tax, in addition to the amount of the tax and penalty first imposed.

(3) If the Finance Director determines that the nonpayment of any remittance due under this Ordinance is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto, in addition to the penalties stated in subsection 8.3125(1) & 8.3125(2), if applicable.

(4) In addition to the penalties imposed, any Marijuana Retailer that fails to remit any tax imposed shall pay interest at the rate of one (1) percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(5) Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.

Section 7. Section 8.3130 of the Medford Code is added to read as follows:

**8.3130 Appeal.**

**Any Marijuana Retailer aggrieved by any decision of the Finance Director with respect to the amount of tax imposed or interest and penalties may appeal to the Council by filing a notice of appeal using the Uniform Appeal and Hearing Procedure set out at section 1.025 of the Code.**

Section 8. Section 8.3135 of the Medford Code is added to read as follows:

**8.3135 Actions to Collect.**

**(1) Within three years after the tax becomes payable or within three years after a determination becomes final, the City may bring an action in the name of the city in the courts of this state, another state or the United States to collect the amount delinquent and penalties and interest.**

**(2) In lieu of filing an action for the recovery, the City may submit any outstanding tax to a collection agency if such taxes are more than thirty (30) days delinquent. So long as the City has complied with ORS 697.105, the City may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty (50) dollars or fifty (50) percent of the outstanding tax, penalties and interest owing.**

Section 9. Section 8.3140 of the Medford Code is added to read as follows:

**8.3140 Violation of Ordinance.**

**(1) Violation of a provision of this Ordinance constitutes a violation punishable by a fine as set forth in section 1.100 of the Code. Each day in which a violation is caused or permitted to exist constitutes a separate violation.**

**(2) Notwithstanding section 8.3140(1), violation of section 8.3125(3) constitutes a crime, and shall be punishable as set forth in section 5.990(1) of the Code.**

**(3) The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law.**

Section 10. Section 8.3145 of the Medford Code is added to read as follows:

**8.3145 Severability.**

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

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///  
///

PASSED by the Council and signed by me in authentication of its passage this \_\_\_\_ day  
of \_\_\_\_\_, 2016.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

APPROVED \_\_\_\_\_, 2016.

\_\_\_\_\_  
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**  
**AGENDA ITEM COMMENTARY**

Item No: 60.3

www.ci.medford.or.us

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- \$100,000 transfer from Park Dedication Fund to Park Southeast Ares SDC Fund
- \$1,000,000 transfer from Park Dedication Fund to Park Improvement Fund

**FINANCIAL AND/OR RESOURCE CONSIDERATIONS**

The proposed resolution will increase or move appropriations as follows:

General Fund	\$ 313,940
Park Dedication Fund	1,100,000
Park Southeast Area SDC Fund	100,000
Park Improvement Fund	1,000,000
Total	<u>\$ 2,513,940</u>

**TIMING ISSUES**

None

**COUNCIL OPTIONS**

Approve, modify or deny the resolution.

**STAFF RECOMMENDATION**

Staff recommends approval of the resolution

**SUGGESTED MOTION**

I move to approve the resolution as outlined in the attached exhibit.

**EXHIBITS**

Resolution

Supplemental Budget Request is attached.

RESOLUTION NO. 2016-149

A RESOLUTION adopting the eighth Supplemental Budget for the 2015-17 biennium.

WHEREAS, a supplemental budget is required to change appropriations in certain circumstances under ORS 294.471; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDFORD, OREGON:

SECTION 1. The City Council hereby adopts the eighth Supplemental Budget for the 2015-17 biennium.

SECTION 2. The City Council hereby makes the new appropriations and transfers of appropriations for the 2015-17 biennium in the amounts and for the purposes shown on the Supplemental Budget Adjustment form which is attached hereto as Exhibit A and incorporated herein by reference.

PASSED by the Council and signed by me in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

Requesting Department: Finance

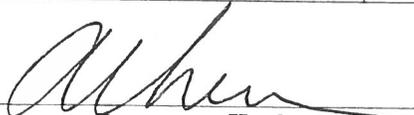
Biennium **FY15/16 - FY16/17**

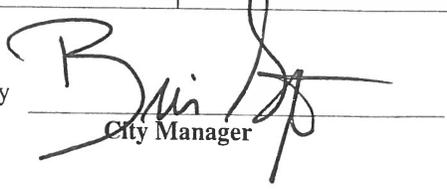
Date of Proposed Council Action: 12/15/2016  
1111

Date **December 8, 2016**

Explanation of Requested Transfer: See AIC

Account Number	Description	Project Number	Debit	Credit
001-1101-611.XX	Salaries & Benefits		135,000	
001-1104-611.XX	Salaries & Benefits		75,000	
001-0101-621.22-12	Professional Serv Other Cont Services		100,000	
001-1609-614.99-00	Contingency			150,000
001-0000-440.05-00	Sale of Property			160,000
001-3301-641.40-04	Motive Equipment		2,810	
001-0000-440.05-00	Sale of Property			2,810
001-3301-641.40-04	Motive Equipment		1,130	
001-0000-440.05-00	Sale of Property			1,130
015-1608-614.70-28	Transfer to SDC SE Area Plan		100,000	
015-1608-614.70-29	Transfer to Parks Improvement Fund		1,000,000	-
028-0000-470.15-00	Transfer From SDC Fund		-	100,000
029-0000-470.15-00	Transfer From SDC Fund			1,000,000
<b>TOTALS</b>			<b>1,413,940</b>	<b>1,413,940</b>

Requested by   
Department Head

Approved by   
City Manager



# CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 120.1

[www.ci.medford.or.us](http://www.ci.medford.or.us)

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**DEPARTMENT:** City Recorder  
**PHONE:** 541-774-2088  
**STAFF CONTACT:** Karen M. Spoons, Recorder  
Kevin McConnell, Deputy City Attorney  
Don Lane, Police Sergeant

**AGENDA SECTION:** Public Hearings  
**MEETING DATE:** December 15, 2016

---

## **PUBLIC HEARING**

Consider an appeal of the City Recorder's administrative decision pertaining to unlawful accumulation of household trash and junk located at 24 N. Orange Street.

## **SUMMARY AND BACKGROUND**

Medford Code 5.500 prohibits unlawful accumulation of junk on private property in the City of Medford. The violation of section 5.500 is deemed to be a public nuisance, to be abated under Medford Code section 5.520. Nuisance abatement under Medford Code section 5.520 requires notice to be posted on the property, filed with the City Recorder, and mailed to the last known address of the owner on the records of the Jackson County Tax Assessor.

On October 5, 2016, Medford Code Enforcement posted a notice at 24 N. Orange Street due to unlawful accumulation of junk and mailed a copy of the posted notice to defendant. Within ten days of the City posting the property, appellant, through his agent, requested a hearing per Medford Code section 5.525(1).

An administrative hearing was scheduled and held on November 14, 2016. At the hearing, Deputy City Attorney Kevin McConnell presented the Respondent's Memorandum of Law regarding Nuisance Abatement, 24 N. Orange Street, with Exhibits 1-4. Appellant's agent, William Syvertsen, attended and provided a photo of a portion of the back yard property at 24 N. Orange Street. Sergeant Don Lane and Code Enforcement Officer Eric Kounz, Senior Assistant City Attorney Katie Zerkel and City Recorder Karen Spoons were also in attendance. Evidence was presented to the City Recorder. The City Recorder stated there would be an on-site inspection after the hearing, which Mr. Syvertsen agreed to.

The City Recorder, along with Sergeant Don Lane and Community Service Officer Eric Kounz, viewed the property on November 15, 2016. Mr. Syvertsen gave a tour of the property. Observed was household trash and junk in the front yard, both side yards, and in the back yard. Photos were taken and are attached as Exhibit F.

On November 16, 2016, the City Recorder sent a letter to the appellant stating the appeal has been denied due to accumulation of household trash and junk on the property. The appellant was given ten days to abate the nuisance or appeal to City Council. A letter was received on November 28, 2016 by the appellant's agent requesting an appeal before City Council.

## **PREVIOUS COUNCIL ACTIONS**

None on this particular case. The last nuisance appeal before Council was February 2010 for property located on Gilman Road.

## **ANALYSIS**

Pursuant to Medford Code 5.500 the accumulation of junk is declared to be a public nuisance.

## **FINANCIAL AND/OR RESOURCE CONSIDERATIONS**

None



# CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 120.1

[www.ci.medford.or.us](http://www.ci.medford.or.us)

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## **TIMING ISSUES**

If the City Council determines that a nuisance exists, the owner or owner's agent shall abate the nuisance within ten days of the Council's decision; or the nuisance shall be abated by the City in the manner provided in Section 5.530.

## **COUNCIL OPTIONS**

Uphold the decision of the City Recorder by determining a nuisance exists or determine that the property is free of junk and agree on the side of the property owner.

## **STAFF RECOMMENDATION**

Deny the appeal and uphold the decision of the City Recorder.

## **SUGGESTED MOTION**

I move to uphold the decision of the City Recorder by determining a nuisance still exists at 24 N. Orange Street.

## **EXHIBITS**

- Exhibit A: Medford Code 5,500, 5.520 and 5.525
  - Exhibit B: Letter from William Syvertsen requesting hearing received October 17, 2016
  - Exhibit C: Letter to appellant and agent dated October 19, 2016
  - Exhibit D: Respondent's Memorandum of Law, Nuisance Abatement of 24 N. Orange Street, Exhibits 1-4 (Exhibit 3 video available in the City Recorder's office)
  - Exhibit E: Photo of property presented by William Syvertsen on November 14, 2016
  - Exhibit F: Photos of property taken by Police Department on November 15, 2016
  - Exhibit G: City Recorder Notice of Findings dated November 16, 2016
  - Exhibit H: Letter from William Syvertsen requesting appeal received November 28, 2016
  - Exhibit I: Letter to appellant and agent dated December 5, 2016
- Recording of hearing available in the City Recorder's office

## 5.500 Unlawful Accumulation of Junk

(1) No person shall cause or allow an unsightly or malodorous accumulation of junk, garbage, animal feces, scrap metal, scrap lumber, used tires, discarded building material, appliances or fixtures, or dismantled machinery on public or private property unless the property is in lawful use for junk storage or recycling in compliance with applicable state and federal laws and this Code.

(2) A violation of this section constitutes a violation. Every day in which the accumulation exists constitutes a separate violation. In a prosecution for violation of this section, the property owner shown on the tax records of Jackson County, the lessee, or other person in control of the property shall be presumed to have caused or allowed the accumulation unless that presumption is rebutted by either party.

(3) The unlawful accumulation of junk is declared to be a public nuisance, and may be abated in the manner provided in section 5.520.

[Amd. Ord. No. 2000-45, March 16, 2000.]

## 5.520 Nuisance Abatement

(1) When the City Manager, through a city department, has knowledge that a public nuisance exists, unless summary abatement is authorized, he shall require notice to be posted on the property liable for abatement of a nuisance, directing the removal of the nuisance.

(2) At the time of posting, the City Recorder shall cause a copy of the notice to be mailed to the owner of the property, or his agent, at the address last shown on the records of the Jackson County Tax Assessor.

(3) The person posting and the person mailing the notice shall file a certificate with the City Recorder stating the date that the notices were posted and mailed.

(4) The notice to abate shall contain:

(a) A description of the property, by street address or otherwise, on which the nuisance exists;

(b) A description of the nuisance;

(c) A direction to remove and abate the nuisance within ten days of the date of notice or show that no nuisance exists, as provided by section 5.525;

(d) A statement that unless the nuisance is removed or a hearing requested under section 5.525, the City, on expiration of ten days from the date of notice, shall remove the nuisance and assert a lien on the property for the cost of removal plus 25 percent or \$15, whichever is greater, for administrative costs;

(e) A statement that failure to abate the nuisance may warrant imposition of a fine.

(5) An error in the name or address of the owner or agent shall not make the mailed notice void, and in such case the posted notice shall be sufficient.

[Amd. Sec. 1, Ord. No. 5235, Aug. 16, 1984; Amd. Sec. 1, Ord. No. 7852, April 6, 1995; Amd. Ord. No. 2000-196, Oct. 5, 2000.]

### **5.525 Abatement by Owner**

(1) Within ten days after posting and mailing the notice described in section 5.520, the owner or owner's agent shall remove or abate the nuisance or file with the City Recorder a written statement that no nuisance exists and request a hearing. If a written statement is filed, the City Recorder shall set the matter for an administrative hearing within 30 days of receiving the request.

(2) On receipt of the written statement, the City Recorder at the time specified shall hear the owner or agent and may hear other persons and consider other matters relevant to the issue of whether a nuisance in fact exists. The City Recorder shall make a determination of the issue without being bound by technical rules of evidence.

(3) If the City Recorder determines that a nuisance in fact exists, the owner or his agent shall abate the nuisance within ten days of the City Recorder's findings and if not, the nuisance shall be abated by the City in the manner provided in section 5.530.

(4) The owner or owner's agent may appeal the City Recorder's findings to the City Council. A written notice of appeal shall be filed with the City Recorder within ten days after the City Recorder's decision is mailed. The City Recorder shall set the matter for public hearing at the next regular meeting of the City Council. If the City Council determines that a nuisance exists, the owner or owner's agent shall abate the nuisance within ten days of the Council's decision; or the nuisance shall be abated by the City in the manner provided in Section 5.530.

[Amd. Sec. 2, Ord. No. 7852, April 6, 1995.]

William Donald Syvertsen  
24 N. Orange Street  
Medford, OR 97501

(541) 981-4349  
~~(267) 399-3833~~

RE: Case #: 16-00000582  
Parcel # 14100

As pertaining to the field inspection conducted the 27th of September by two of Medford Police Department Officers, This is the rebuttal to the Officers claim that a violation of Code 5.500 unlawful accumulation of Junk, was committed.

"No such event transpired". Furthermore, as per code 5.525 Abatement by Owner. The owners' agent "William Donald Syvertsen hereby" requests, that the Medford City Recorder need not be bothered with this most unnecessary waste of energy and sees no reason in conducting an administrative hearing 30 days from now. However if the owners agent is required to request a hearing by mandate of code. "Then so be it". Consider this as an instrument of "Rebuttal and Request". I William Donald Syvertsen a.k.a. The Owners Agent hopes this satisfies what needs to be satisfied

Thank you

William Donald

RECEIVED

OCT 17 2016

CITY OF MEDFORD  
CITY RECORDER'S OFFICE

*Revised Exhibit B*



OFFICE OF  
THE CITY RECORDER  
cromed@ci.medford.or.us

CITY OF MEDFORD  
411 WEST 8TH STREET  
MEDFORD, OREGON 97501

TELEPHONE (541) 774-2000  
FAX: (541) 618-1700  
www.ci.medford.or.us

October 19, 2016

Robert Gayle Flyte  
24 N. Orange Street  
Medford, OR 97501

William Donald Syvertsen  
24 N. Orange Street  
Medford, OR 97501

RE: Case #: 16-0582  
Parcel #: 372W25AC 14100

The City Recorder's office has received your request for a hearing concerning the Code Enforcement Case 16-0582 pertaining to 24 N. Orange Street. The hearing has been scheduled for Monday, November 14, 2016 at 2:00 p.m. in the City Manager's Conference Room located on the 3<sup>rd</sup> Floor of City Hall at 411 W. 8<sup>th</sup> Street, Medford.

The hearing procedure will begin with your presentation of information regarding your appeal; City staff will then present their information. No decision will be made during the hearing. Once a decision has been made, the decision will be mailed to all parties involved. It is understood that William Donald Syvertsen will be acting on behalf of Robert Gayle Flyte.

If you have any additional questions you may contact the City Recorder's office at (541) 774-2017.

Sincerely,

A handwritten signature in black ink that reads "Karen M. Spoonts".

Karen M. Spoonts, MMC  
City Recorder

CITY OF MEDFORD MUNICIPAL COURT, JACKSON COUNTY, OREGON

ROBERT GAYLE FLYTE,	)	
	)	
Appellant,	)	IN RE NUISANCE ABATEMENT
	)	24 N Orange Street
	)	
	)	(Medford Code Section 5.525(2)
	)	Administrative Appeal)
	)	
v.	)	RESPONDENT’S MEMORANDUM
	)	OF LAW
CITY OF MEDFORD, an Oregon	)	
Municipal Corporation,	)	
	)	
Respondent.	)	

MEMORANDUM

**I. Facts**

Medford Code section 5.500 prohibits unlawful accumulation of junk on private property in the City of Medford (“City”). The violation of section 5.500 is deemed to be a public nuisance, to be abated under Medford Code section 5.520.

Nuisance abatement under Medford Code section 5.520 requires notice to be posted on the property, filed with the City Recorder, and mailed to the last known address of the owner on the records of the Jackson County Tax assessor.

///

Administrative Appeal- Respondent’s Memorandum of Law- In re Nuisance Abatement- 24 N Orange Street 1

Medford City Attorney’s Office

411 West 8th Street

Medford, OR 97501

(541) 774 – 2020

The notice describes the conditions to be corrected, the time within which to correct (10 days after posting and mailing) or seek a hearing and the right of the City to abate and charge back to the owner the costs of abatement.

Medford Code section 5.530 permits the City to abate public nuisances if the owner of the property fails to do so in the time allowed.

On or about March 14, 2016, a citizen complained to code enforcement- describing a large amount of accumulated junk and household garbage. In response to the complaint, Kounz was assigned to investigate the condition of the Property. On or about March 16, 2016, Kounz inspected the Property, and observed a large amount of junk and household garbage. *See Declaration of Eric Kounz*, attached hereto as **Exhibit 1**.

Kounz Gave Defendant 48 hours to abate the nuisance, and elected not to issue a citation. After verifying that Defendant was the owner of the Property, Kounz reinspected the Property on March 22, 2016. Finding no change in the Property's condition, Kounz photographed the violations and cited Defendant for violation of section 5.500 of the Medford Code. *See Exhibit 1*.

Kounz reinspected the Property many times from April to September 2016, in an effort to work with Defendant and obtain voluntary compliance. Those efforts failed. *Exhibit 1*.

Kounz issued citations to Defendant on or about March 4, March 11, May 24, June 2, August 11, August 23 and September 22, 2016. *Exhibit 1*. With the exception of

Administrative Appeal- Respondent's Memorandum of Law- In re Nuisance Abatement- 24 N Orange Street 2

Medford City Attorney's Office

411 West 8th Street

Medford, OR 97501

(541) 774 – 2020

the citations issued on August 23, 2016 and September 22, 2016, Defendant failed to appear for his court appearances and was found guilty by default. *See Declaration of Denise Bostwick, attached hereto as Exhibit 2.*

On October 5, 2016, Kounz posted the notice required by Medford Code section 5.520 and mailed a copy of the posted notice to Defendant. *Exhibit 1.* At the time of posting, Officer Trevor Arnold, accompanied by Kounz, shot a video via a department-issued portable audio/video recorder (bodycam) of the violation. The video taken by Officer Arnold is attached hereto as **Exhibit 3.**

Within 10 days of the City posting the Property, Appellant, through his agent, requested a hearing per Medford Code section 5.525(1). *See October 17, 2016 Email from William Donald Syvertsen, attached hereto as Exhibit 4.*

Several times in October, 2016, Kounz visited the Property to see if Appellant has come into compliance with the Code (October 20, 24, 25, 26 and 31, 2016). He determined that it was not, and issued citations to Appellant (still pending). On November 10, 2016, Kounz inspected the Property one last time. Kounz determined that the Property was still in violation of section 5.500. Photos were taken of the violation, and copies are attached hereto :

## **II. Analysis**

Defendant has been afforded every opportunity to correct these violations, but has chosen not to do so. Approximately 8 months have passed since Defendant was contacted regarding these violations. The surrounding neighbors have contacted the City

Administrative Appeal- Respondent's Memorandum of Law- In re Nuisance Abatement- 24 N Orange Street 3

Medford City Attorney's Office

411 West 8th Street

Medford, OR 97501

(541) 774 – 2020

numerous times regarding Defendant's violations, demanding the City act. Defendant not only refuses to correct these violations, but has also failed to appear on many of the issued citations. The City has no option left but to request that Appellant abate the nuisance. If he fails to do so, the City will be forced to seek abatement via Medford Code section 5.530.

### III. Conclusion

Based upon the facts of this case, Respondent requests that the City Recorder make a determination that a nuisance in the form of an unlawful accumulation of junk exists at the Property, issue findings in support thereof, and order Appellant to abate the nuisance within 10 days. *See Medford Code section 5.525(3).*

DATED this 11<sup>th</sup> day of November 2016.



---

Kevin R. McConnell, OSB 022360  
Deputy City Attorney, City of Medford

CITY OF MEDFORD MUNICIPAL COURT, JACKSON COUNTY, OREGON

ROBERT GAYLE FLYTE,	)	
	)	
Appellant,	)	IN RE NUISANCE ABATEMENT
	)	24 N Orange Street
	)	(Medford Code Section 5.525(2)
	)	Administrative Appeal)
v.	)	DECLARATION OF ERIC V. KOUNZ
	)	
CITY OF MEDFORD, an Oregon	)	
Municipal Corporation,	)	
	)	
Respondent.	)	

I, Eric Vincent Kounz, declare as follows:

1. I am over 18 and competent to testify, and have personal knowledge of the facts contained herein.

2. I am employed by the City of Medford as a Code Enforcement Officer. I have been so employed for over 4 years. My job duties include abating nuisances pursuant to Medford Code.

3. On March 14, 2016, a complaint was received reporting an accumulation of junk and household garbage at 24 N Orange Street ("the Property").

4. I inspected the Property on March 16, 2016, and found the property to be in violation of Medford Municipal Code section 5.500 (Unlawful Accumulation of Junk). I observed a large amount of household garbage and junk in the backyard. I informed

EXHIBIT 1

Defendant that he would be cited for violation of section 5.500 if the nuisance was not abated within 48 hours.

5. I verified with county records that Defendant was the owner of the Property.

6. On March 22, 2016, I reinspected the Property, and found that there had been no change its condition. I met with Defendant and explained the violations to him. At this time, a municipal court citation was issued to Defendant for violating section 5.500 of the code. Photos were taken of the violations, and copies are attached hereto as **Exhibit A**.

7. On April 4, 2016, I reinspected the Property and found that it was still in violation of section 5.500. I issued a municipal court citation to Defendant for violation of section 5.500 of the code. Photos were taken of the violations, and copies are attached hereto as **Exhibit B**.

8. On April 11, 2016, I reinspected the Property and found little to no change. Defendant informed me that he was working to secure a trailer- and would then work to abate the nuisance. Photos were taken of the violations, and copies are attached hereto as **Exhibit C**.

9. On May 24, 2016, I reinspected the Property and observed that its condition was in worse shape than it was on my previous visits. Photos were taken of the violations, and copies are attached hereto as **Exhibit D**.

10. On June 6, 2016, I reinspected the Property and observed previously mentioned junk and household garbage littering the property. An additional citation was issued to Defendant for violating section 5.500 of the code.

**EXHIBIT 1**

11. On July 20, 2016, I reinspected the Property and noticed that while not all junk and household garbage was abated, some progress had been made by Defendant.

12. On August 10, 2016, an additional complaint was received regarding continual junk/household trash surrounding the Property.

13. On August 11, 2016, I reinspected the Property and noted additional large amounts of household garbage and trash. A citation was issued to Defendant for violating section 5.500 of the code.

14. On August 23, 2016, I reinspected the Property and noted no progress had been made. A citation was issued to Defendant for violating section 5.500 of the code.

15. On September 19, 2016, I reinspected the Property and noted no progress had been made. A citation was issued to Defendant for violating section 5.500 of the code.

16. On October 5, 2016, I posted the property at 24 N Orange in accordance with Medford Municipal Code 5.500. Copies of the notice posted were mailed to Appellant pursuant to Medford Municipal Code section 5.520(2). A copy of the posted notice and proof service is attached hereto as **Exhibit E**. A certificate was filed with the City Recorder's office stating the date the notice was posted and mailed pursuant to Medford Municipal Code section 5.520(3). A copy of the certificate filed with the City Recorder's office is attached hereto as **Exhibit F**.

17. I reinspected the Property on October 20, 24, 25, 26 and 31, and noted no progress had been made to abate the nuisance. I cited Appellant for violation of section 5.500 of the code.

**EXHIBIT 1**

18. I reinspected the Property on November 10, and found that no progress had been made to abate the nuisance. Photos were taken of the violations, and copies are attached hereto as **Exhibit G**.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED this 11 day of November, 2016.

  
Eric Vincent Kounz  
Code Enforcement Officer  
City of Medford

**EXHIBIT 1**



03/22/2016 14:25

16-6632

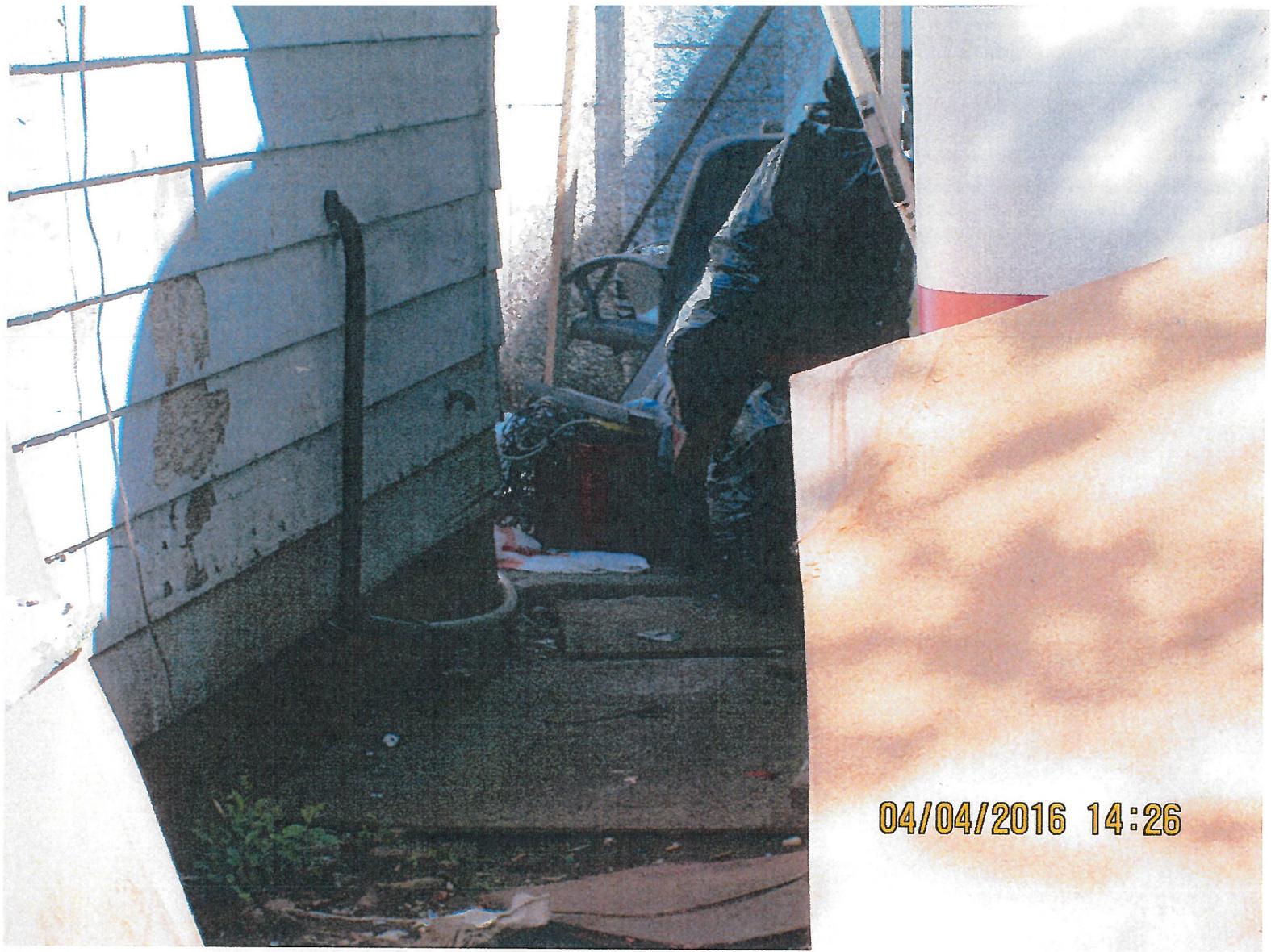




16-7708







04/04/2016 14:26



16-8393









16-11954



1  
+





POLICE DEPARTMENT

CITY OF MEDFORD  
411 W 8TH STREET  
MEDFORD, OR 97501

PHONE: (541)774-2016  
FAX: (541)774-2570  
City WebPage: [www.ci.medford.or.us](http://www.ci.medford.or.us)  
Police E-Mail: [police@ci.medford.or.us](mailto:police@ci.medford.or.us)

October 5, 2016

Sent via Certified and First Class Mail

Robert Gale Flyte  
24 N Orange St  
Medford, OR 97501

RE: Case #: 16-00000582  
Parcel #: 372W25AC 14100

Recently, our office conducted a follow up field inspection of your property located at **24 N Orange St** where we observed the following violation of the Municipal Code.  
Code:

*1) 5.500 Unlawful Accumulation of Junk*

**REQUIRED ACTION-**

REMOVE AND ABATE THE NUISANCE WITHIN TEN DAYS OR SHOW THAT NO NUISANCE EXISTS, as provided by section 5.525 (attached). Unless the nuisance is removed or a hearing requested under section 5.525, on expiration of ten days from the date of notice the City of Medford shall remove the nuisance and assert a lien on the property for the cost of removal plus 25 percent or \$15, whichever is greater, for administrative costs. In addition, failure to abate the nuisance may warrant imposition of a fine.

A penalty of \$250 per day for each violation may be imposed if the required action is not completed. Of course, we invite your call to us with any questions at (541) 774-2092. If I am out of the office leave a voice mail message, and I will return your call as soon as possible.

  
Eric Kounz  
Medford Police Department

Posted October 5, 2016 at



## MEDFORD MUNICIPAL CODES:

### 5.500 Unlawful Accumulation of Junk:

- (1) No person shall cause or allow an unsightly or malodorous accumulation of junk, garbage, animal feces, scrap metal, scrap lumber, used tires, discarded building material, appliances or fixtures, or dismantled machinery on public or private property unless the property is in lawful use for junk storage or recycling in compliance with applicable state and federal laws and this Code.
- (2) A violation of this section constitutes a violation. Every day in which the accumulation exists constitutes a separate violation. In a prosecution for violation of this section, the property owner shown on the tax records of Jackson County, the lessee, or other person in control of the property shall be presumed to have caused or allowed the accumulation unless that presumption is rebutted by either party.
- (3) The unlawful accumulation of junk is declared to be a public nuisance, and may be abated in the manner provided in section 5.520.

[Amd. Ord. No. 2000-45, March 16, 2000.]

**VIOLATION:** Extremely large amount of household trash and junk located in the front yard, side yard, and back yard of mentioned property. All household trash and junk must be removed.



### **5.525 Abatement by Owner:**

(1) Within ten days after posting and mailing the notice described in section 5.520, the owner or owner's agent shall remove or abate the nuisance or file with the City Recorder a written statement that no nuisance exists and request a hearing. If a written statement is filed, the City Recorder shall set the matter for an administrative hearing within 30 days of receiving the request.

(2) On receipt of the written statement, the City Recorder at the time specified shall hear the owner or agent and may hear other persons and consider other matters relevant to the issue of whether a nuisance in fact exists. The City Recorder shall make a determination of the issue without being bound by technical rules of evidence.

(3) If the City Recorder determines that a nuisance in fact exists, the owner or his agent shall abate the nuisance within ten days of the City Recorder's findings and if not, the nuisance shall be abated by the City in the manner provided in section 5.530.

(4) The owner or owner's agent may appeal the City Recorder's findings to the City Council. A written notice of appeal shall be filed with the City Recorder within ten days after the City Recorder's decision is mailed. The City Recorder shall set the matter for public hearing at the next regular meeting of the City Council. If the City Council determines that a nuisance exists, the owner or owner's agent shall abate the nuisance within ten days of the Council's decision; or the nuisance shall be abated by the City in the manner provided in Section 5.530.

[Amd. Sec. 2, Ord. No. 7852, April 6, 1995.]

### **5.530 Abatement by the City:**

(1) If the nuisance described in the notice has not been removed or abated within the time allowed, or cause shown as specified in section 5.525, the City Manager or his agent shall cause the nuisance to be abated

(2) Notwithstanding other provisions of this Code, whenever, in the judgment of the City Manager or his agent, there is reasonable cause to believe that a clear and immediate danger to the public health, welfare, or safety or to the environment exists from the public nuisance, the City Manager or his agent without hearing or prior notice may cause the summary abatement of such public nuisance.

(3) The City Manager or his agent shall cause a record to be kept of the cost incurred in abating the nuisance, including a charge of 25 percent or \$15, whichever is greater, for administration, and shall file a statement of costs with the City Recorder, who may then assess the costs on the property as provided in section 5.535.

[Amd. Ord. No. 5005, Nov. 17, 1983.]



### 5.535 Assessment of Costs:

- (1) The City Recorder shall mail notice of the assessment for the cost of nuisance abatement to the property owner or his agent, stating:
  - (a) The date the notice is mailed;
  - (b) The cost of abatement;
  - (c) That the cost will be assessed to and become a lien against the property for the amount indicated;
  - (d) That objections to the proposed assessment must be made in writing and filed with the Recorder not more than 15 days after mailing the notice.
- (2) Not less than 15 days after the date of the notice, objections to the proposed assessment shall be heard and determined by the Council in its regular course of business.
- (3) An assessment for the cost of abatement as determined by the Council shall be entered in the docket of City liens. When the entry is made, or not less than 30 days after the mailing of the notice provided in subsection 1, whichever is later, it shall constitute a lien on the property from which the nuisance was abated.
- (4) The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the rate specified in section 3.470(2), beginning 10 days after the entry of the lien in the lien docket.
- (5) An error in the name of the owner or agent in charge of the property or a failure to receive the notice of the assessment shall not render the assessment void, but it shall remain a valid lien against the property.

[Amd. Sec. 3, Ord. No. 7852, April 6, 1995.]











CITY OF MEDFORD MUNICIPAL COURT, JACKSON COUNTY, OREGON

ROBERT GAYLE FLYTE, )  
 )  
 ) IN RE NUISANCE ABATEMENT  
 Appellant, )  
 ) 24 N Orange Street  
 )  
 ) (Medford Code Section 5.525(2)  
 ) Administrative Appeal)  
 )  
 v. ) DECLARATION OF DENISE BOSTWICK  
 )  
 CITY OF MEDFORD, an Oregon )  
 Municipal Corporation, )  
 )  
 Respondent. )

I, Denise Bostwick, declare as follows:

1. I am over 18 and competent to testify, and have personal knowledge of the facts contained herein.
2. I am the court clerk for the Medford Municipal Court. Part of my responsibility for the court is to manage the court records and dockets.
3. I have reviewed the Medford Municipal Court case files pending against Appellant.
4. In this matter, CSO Kounz issued citations to Defendant on or about March 22, 2016, April 4, 2016, April 11, 2016, May 24, 2016, June 2, 2016, August 11, 2016, August 23, 2016, September 22, October 20, October 24, October 25, October 26, and October 31, 2016.

5. With the exception of the citations issued on August 23, 2016 September 22, 2016 and the citations issued on October 20, 24, 25, 26, and 31, 2016 (still pending), Defendant failed to appear for his court appearances and was found guilty by default.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

DATED this 11 day of November, 2016



---

Denise Bostwick  
Municipal Court Clerk  
City of Medford

## Kevin R. McConnell

---

**From:** Kevin R. McConnell  
**Sent:** Wednesday, November 09, 2016 2:07 PM  
**To:** Kevin R. McConnell  
**Subject:** FW: Request for hearing pertaining to case # 16-00000582

-----Original Message-----

**From:** Legal Department  
**Sent:** Monday, October 17, 2016 1:06 PM  
**To:** Kevin R. McConnell  
**Subject:** FW: Request for hearing pertaining to case # 16-00000582

Please see the message received in the City Recorder's Office.

Thank you,

Winnie Shepard  
Deputy City Recorder/Assistant to Mayor and Council  
411 West 8th Street  
Medford, OR 97501  
(541) 774-2003

-----Original Message-----

**From:** William Syvertsen [<mailto:ese@writeme.com>]  
**Sent:** Monday, October 17, 2016 12:36 PM  
**To:** Recorder; Police Admin  
**Subject:** Request for hearing pertaining to case # 16-00000582

William Donald Syvertsen  
24 N. Orange Street  
Medford, OR 97501  
(541) 981-4349

RE: Case #: 16-00000582  
Parcel # 14100

As pertaining to the field inspection conducted the 27th of September by two of Medford Police Department Officers, This is the rebuttal to the Officers claim that a violation of Code 5.500 unlawful accumulation of Junk, was committed.

"No such event transpired". Furthermore, as per code 5.525 Abatement by Owner. The owners' agent "William Donald Syvertsen hereby" requests, that the Medford City Recorder need not be bothered with this most unnecessary waste of energy and sees no reason in conducting an administrative hearing 30 days from now. However if the owners agent is required to request a hearing by mandate of code. "Then so be it". Consider this as an instrument of "Rebuttal and Request". I William Donald Syvertsen a.k.a. The Owners Agent hopes this satisfies what needs to be satisfied

Thank you  
William Donald

11/14/16



Exhibit E  
Photo of property presented by W. Svetsen  
November 14, 2016







Exhibit F

Photos of property taken by Police Dept.  
November 15, 2016





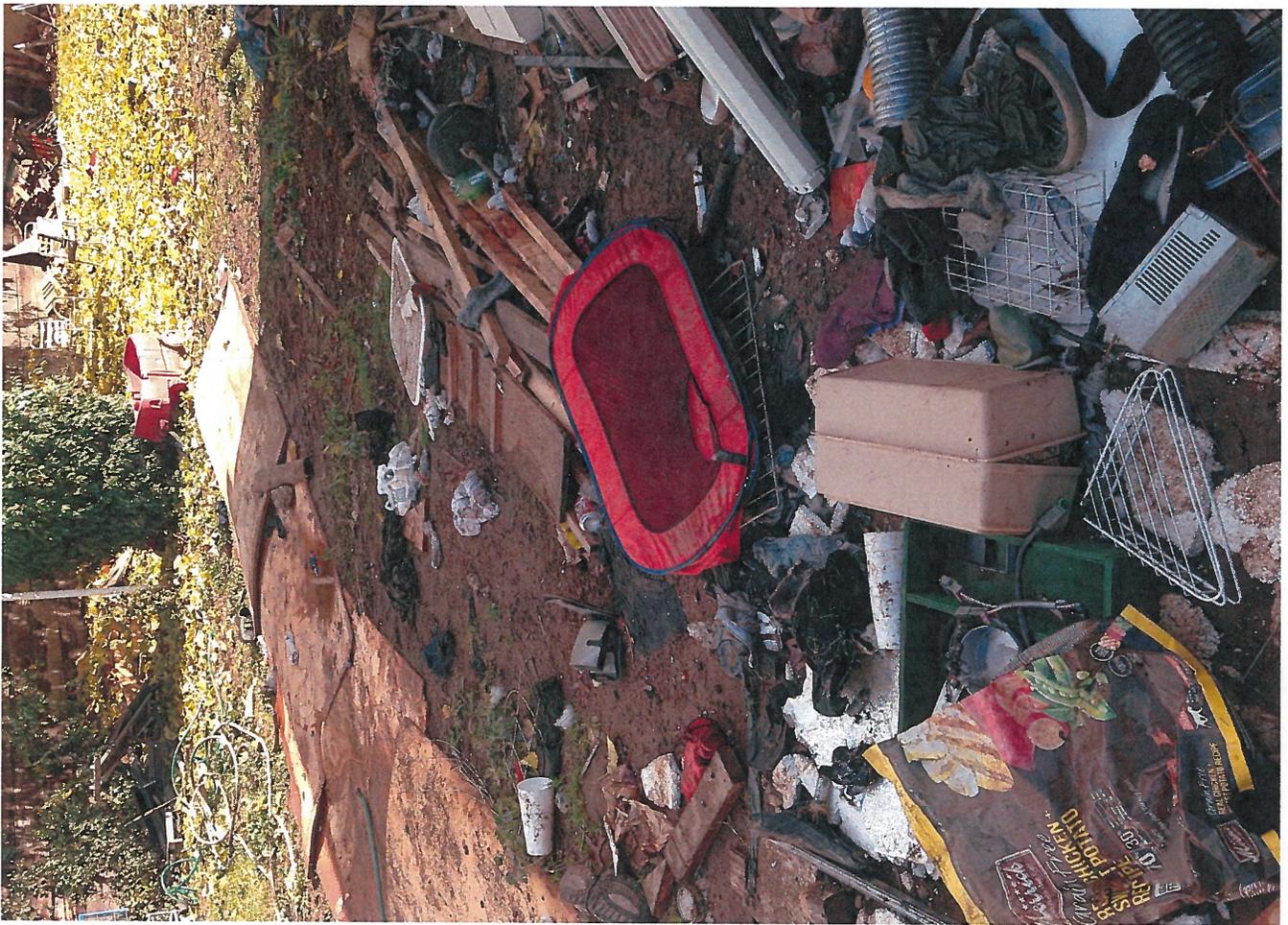


Exhibit F  
Photos of property taken by Police Dept.  
November 15, 2016



Exhibit F  
Photos of property taken by Police Dept.  
November 15, 2016



Exhibit F  
Photos of property taken by Police Dept.  
November 15, 2016



Exhibit F



OFFICE OF  
THE CITY RECORDER  
cromed@ci.medford.or.us

CITY OF MEDFORD  
411 WEST 8TH STREET  
MEDFORD, OREGON 97501

TELEPHONE (541) 774-2000  
FAX: (541) 618-1700  
www.ci.medford.or.us

November 16, 2016

Robert Gayle Flyte  
24 N. Orange Street  
Medford, OR 97501

William Donald Syvertsen  
24 N. Orange Street  
Medford, OR 97501

RE: Case 16-0582  
Parcel 372W25AC 14100

On Monday, November 14, 2016 an appeal hearing was held at your request regarding Case #16-0582 pertaining to household trash and junk at 24 N. Orange Street. Those in attendance were City Recorder Karen Spoonts, Deputy City Attorney Kevin McConnell, Senior Assistant City Attorney Katie Zerkel; Police Officer Greg Nichols, Community Service Officer Eric Kounz, William Donald Syvertsen representing the owner, and Don Knutson, friend of Mr. Syvertsen.

Deputy City Attorney Kevin McConnell presented evidence regarding the nuisance issues at this property. Mr. Syvertsen presented a current photo of a portion of the backyard stating that some of the junk had been removed although more would be taken away after receiving their next paycheck, which would be early December. As I mentioned on the phone with Mr. Syvertsen and again at the meeting, I would personally inspect the property after the appeal to verify the nuisance had been resolved.

On Tuesday, November 15, 2016, a site inspection was held at 11:00 a.m. Those at the inspection were City Recorder Karen Spoonts, Police Sgt. Don Lane, and Community Service Officer Eric Kounz. Although a portion of the back yard has been cleaned, junk remained in the front yard, both side yards, and the back yard. Photos were taken to document findings. I hereby deny your appeal and determine that a nuisance still exists at 24 N. Orange Street.

The owner shall abate the nuisance within ten days of the City Recorder's findings, and if not, the nuisance shall be abated by the City per Medford Code 5.530. You have the right to appeal the City Recorder's findings to the City Council as per Medford Code 5.525(4) within ten days after the City Recorder's decision is mailed.

Karen M. Spoonts, MMC  
City Recorder

Cc: Police Sgt. Don Lane  
Community Service Officer Eric Kounz  
Deputy City Attorney Kevin McConnell

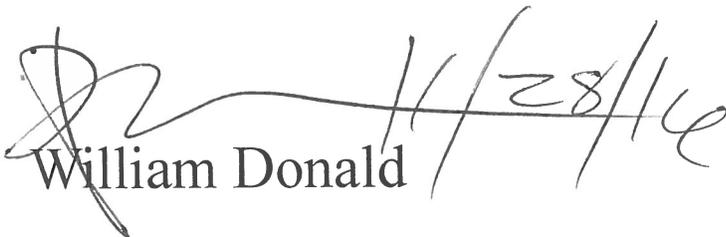
267-399-3833

William Donald Syvertsen  
24 N. Orange Street  
Medford, OR 97501  
(541) 981-4349

RECEIVED  
NOV 28 2016  
CITY RECORDER'S OFFICE

RE: Case #: 16-00000582  
Parcel # 14100

I William Donald Syvertsen the "Owners Agent"  
pertaining to 24 N Orange St, Medford, Oregon,  
97501. Hereby request an appeal of the decision  
made by Mrs. Spontz and want this matter to be  
heard at the city council meeting held on the first  
Thursday of January 2017  
Thank you

  
William Donald



OFFICE OF  
THE CITY RECORDER  
cromed@ci.medford.or.us

CITY OF MEDFORD  
411 WEST 8TH STREET  
MEDFORD, OREGON 97501

TELEPHONE (541) 774-2017  
FAX: (541) 774-2522  
www.ci.medford.or.us

December 5, 2016

Robert Gayle Flyte  
24 N. Orange Street  
Medford, OR 97501

William Donald Syvertsen  
24 N. Orange Street  
Medford, OR 97501

RE: Case #16-0582  
Parcel 372W25AC 14100

The City Recorder's office has received your request to appeal the City Recorder's findings to Medford City Council. The public hearing has been scheduled for Thursday, December 15, 2016 at 7:00 p.m. in Medford City Hall, 411 W. 8<sup>th</sup> Street, Council Chambers, Third Floor.

Medford Code 5.525(4) requires the public hearing be set at the next regular meeting of the City Council. If the City Council determines that a nuisance exists, the owner or owner's agent shall abate the nuisance within ten days of the Council's decision; or the nuisance shall be abated by the City in the manner provided in Medford Code 5.530.

A handwritten signature in black ink that reads "Karen M. Spoons".

Karen M. Spoons, MMC  
City Recorder

Cc: Legal Department  
Sgt. Don Lane, Police Department  
Eric Kounz, Code Enforcement



**CITY OF MEDFORD**  
**AGENDA ITEM COMMENTARY**

Item No: 120.2

www.ci.medford.or.us

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**DEPARTMENT:** Planning  
**PHONE:** (541) 774-2380  
**STAFF CONTACT:** Kelly Akin, Interim Planning Director

**AGENDA SECTION:** Public Hearings  
**MEETING DATE:** December 15, 2016

---

**COUNCIL BILL 2016-150**

An ordinance amending section 10.1610 of the Medford Code to amend the portable sign provisions for the Central Business overlay district. (DCA 16-121)

**SUMMARY AND BACKGROUND**

A number of downtown business owners were contacted by Code Enforcement in the summer of 2016 after a code violation was filed regarding the placement of a portable sign on the sidewalk. Portable signs such as A-frame signs are not permitted to be displayed in the public right-of-way by code. City Council requested review of this provision to enable use of these types of signs within the right-of-way.

**PREVIOUS COUNCIL ACTIONS**

The City Council verbally initiated a code amendment on August 18, 2016.

**ANALYSIS**

There are some business owners in downtown using and displaying portable signs on the sidewalk. Sidewalks are a logical location for such signs as buildings stand adjacent to property lines with little to no setback between the building face and the right-of-way. Downtown sidewalks are typically wide and provide room for street furniture (items such as trees, benches, sidewalk cafes, and signs).

The proposed text was written to enable the use of portable signs on the sidewalk while keeping the safety of pedestrians and motorists in mind.

**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 ordinance amending the portable sign provisions for the Central Business overlay district.

**EXHIBITS**

Ordinance  
Commission Report

ORDINANCE NO. 2016-150

AN ORDINANCE amending section 10.1610 of the Medford Code to amend the portable sign provisions for the Central Business overlay district.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

SECTION 1. Section 10.1610 of the Medford Code is amended to read as follows:

10.1610 Central Business Overlay (CB): Additional Special Signs.

\*\*\*

(4) Portable Signs: One ~~additional~~ portable sign not to exceed 12 square feet in area for each business entrance is permitted. Such signs shall not be located within public right-of-way **except under the following conditions:**

- (i) **The sidewalk width is a minimum of eight feet from face of curb;**
- (ii) **A minimum of four feet of continuous, unobstructed clearance is provided on the sidewalk along the length of the building; and**
- (iii) **The sign complies with Section 10.735 regarding clear view at intersections.**

The portable signs shall only be displayed when the business is open. **Historic review is not required when located within the historic overlay district.**

PASSED by the Council and signed by me in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

APPROVED \_\_\_\_\_, 2016.

\_\_\_\_\_  
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.



toric review is not required when the business is located in the downtown historic overlay.

The Planning Commission reviewed the draft language on Monday, October 24, 2016, during a study session and provided comments.

The Landmarks and Historic Preservation Commission provided comments on Wednesday, October 26, 2016.

The Planning Commission held a public hearing on this amendment on Thursday, November 10, 2016.

### Authority

This proposed plan authorization is a Class-A legislative amendment of Chapter 10 of the Municipal Code. The Planning Commission is authorized to recommend, and the City Council to approve, amendments to Chapter 10 under Medford Municipal Code §§10.102–122, 10.164, and 10.184.

### **ANALYSIS**

The use of portable signs in a downtown setting is common. Typically, buildings have a zero front yard setback. Business entrances are adjacent to wide sidewalks creating a friendly and usable pedestrian environment and opportunity for street furniture (items such as trees, benches, sidewalk cafes, and signs).

Business owners are using portable signs in the downtown. Questions were raised in late July about the placement and permitting of these types of signs through a citizen complaint. The complaint in turn resulted in Code Enforcement taking actions to advise business owners about the regulations with these signs and signs being removed from the right-of-way.

The goal of the text amendment is to enable the use of these types of signs within the right-of-way while keeping pedestrian and motorist safety in mind. The amendment provides a reasonable means for a business owner to place a portable sign on the sidewalk in front of their business under certain conditions. First, the sidewalk needs to be of adequate size to allow for placement of the sign and room for a pedestrian to easily maneuver around it without impediments. Second, a minimum of four feet of continuous, unobstructed clearance is maintained from the edge of the sign and along the entire length of the building frontage. Lastly, the sign cannot impede the vision clearance area at intersections. The combination of these regulations helps provide usable signage options for business owners and safeguards pedestrian flow on sidewalks and visibility to motorists.

### **RECOMMENDED ACTION**

By a 7-1 vote, the Planning Commission recommends adopting the proposed amendments based on the analyses, findings, and conclusions in the Commission Report dated December 8, 2016, including Exhibits A through F.

### **EXHIBITS**

- A Findings and Conclusions
- B Proposed amendment
- C Public Works Comments, September 26, 2016
- D Public Works Comments, October 10, 2016
- E Planning Commission Study Session Minutes, October 24, 2016
- F Planning Commission Public Hearing Minutes, November 10, 2016

**CITY COUNCIL AGENDA: DECEMBER 15, 2016**

# Exhibit A

## FINDINGS AND CONCLUSIONS

### Applicable Criteria

The criteria that apply to code amendments are in Medford Municipal Code §10.184(2). The criteria are rendered in italics; findings and conclusions in roman type.

*Land Development Code Amendment. The Planning Commission shall base its recommendation and the City Council its decision on the following criteria:*

*10.184 (2) (a). Explanation of the public benefit of the amendment.*

### Findings

The amendment provides business owners in the downtown a legal means to display signs in front of their stores on the sidewalk. It clarifies the parameters in which a sign is permitted in the right-of-way and safeguards the pedestrians and motorists by addressing safety standards.

### Conclusions

The amendment provides business owners with additional opportunities to advertise and use signage. It also maintains order within the public right-of-way by ensuring the signs are not an impediment to traffic flow. This criterion is found to be satisfied.

*10.184 (2) (b). The justification for the amendment with respect to the following factors:*

- 1. Conformity with goals and policies of the Comprehensive Plan considered relevant to the decision.*

### Findings

The goal below supports the topic covered with the proposed Municipal Code amendment.

***Economic Opportunities Goal: To actively stimulate economic development and growth that will provide opportunities to diversify and strengthen the mix of economic activity in the City of Medford.***

The modifications to the sign provisions provide opportunities for businesses downtown to advertise and alert pedestrians and motorists of their services and specials. Portable signs help grab people's attention and may help inform citi-

zens or tourists about the types of businesses and services available. This awareness may translate into revenue for a small business owner and keep a business viable.

### Conclusions

The proposed amendment addresses the economic opportunities goal in the Comprehensive Plan. It seeks to further strengthen the vitality and business success in the downtown by allowing portable signs on the sidewalk. A portable sign is an additional tool businesses can use to advertise and generate revenue. This criterion is found to be satisfied.

2. *Comments from applicable referral agencies regarding applicable statutes or regulations.*

### Findings

The proposal was provided to applicable referral agencies and departments identified in Section 10.146 of the Code as well as the Department of Land Conservation and Development. Comments received from City departments were incorporated into the text. The comments included information from Public Works regarding the appropriate clearance distance between the sign and pedestrian access. Public Works also suggested the sign placement of these signs not impact the clear view at intersections.

The Planning Commission reviewed the changes at a study session on Monday, October 24, 2016. Their comments and changes have also been added to the proposed language.

The Landmarks and Historic Preservation Commission discussed the proposal during a study session on Wednesday, October 26, 2016. The majority of the Commissioners were in favor or neutral about the changes. One Commissioner felt portable signs located in the historic district should go through historic review.

A public hearing was held before the Planning Commission on November 10, 2016. No public testimony was provided.

### Conclusions

The proposal was provided to applicable referral agencies and issues raised have been discussed and solutions identified. This criterion is found to be satisfied.

3. *Public comments.*

Findings

The amendment is posted on the City's website for citizen review and comment. No citizen or business owner comments have been received to date.

Staff conducted a site survey on Friday, October 21, 2016, of several city blocks downtown. Businesses were using portable signs in the right-of-way at the time of the site visit. Staff observed that in most cases the signs were not obstructing pedestrian flow on the sidewalk as the sidewalks were wider than eight feet. A-frame signs were the typical type of portable sign business owners were using.

The Planning Commission discussed the proposed changes at their study on Monday, October 24, 2016 and held a public hearing on Thursday, November 10, 2016.

Conclusions

Little public comment has been provided on this issue to date. The Planning Commission has reviewed and made suggestions on the amendments and was in favor of the text changes.

4. *Applicable governmental agreements.*

Findings

There are no governmental agreements that apply to this proposed code amendment.

Conclusions

This criterion is not applicable to this application.

## Exhibit B

### Proposed amendment

Deleted text is ~~struck through~~; added text is underlined

#### 10.1610 Central Business Overlay (CB): Additional Special Signs.

Additional special signs shall be permitted as follows in the CB district:

(1) Fueling Station Signs: One additional ground sign per street frontage, not exceeding 30 square feet in area and 9 feet in height is permitted on each parcel of land occupied by a fueling station. Such signs may not project into public right-of-way.

(2) Drive-up Window Signs: One additional ground sign not to exceed 32 square feet in area and 6 feet in height is permitted on each parcel of land occupied by a drive-up window. Such signs may not project into public right-of-way.

(3) Temporary Sign: One temporary sign on each street frontage is permitted for each separate business. Display period is limited to 30 days and is renewable upon application, but shall not exceed four (4) permits in one (1) calendar year. The area of each sign shall not exceed 32 square feet. No part of any sign shall be higher than the building height as defined in Section 10.705.

(4) Portable Signs: One ~~additional~~ portable sign not to exceed 12 square feet in area for each business entrance is permitted. Such signs shall not be located within public right-of-way except under the following conditions:-

(i) The sidewalk width is a minimum of eight feet from face of curb;

(ii) A minimum of four feet of continuous, unobstructed clearance is provided on the sidewalk along the length of the building; and

(iii) The sign complies with Section 10.735 regarding clear view at intersections.

The portable signs shall only be displayed when the business is open. Historic review is not required when located within the historic overlay district.

[Amd. Sec. 19, Ord. No. 6021, Nov. 19, 1987; Amd. Sec. 17, Ord. No. 2012-32, March 1, 2012.]

# Exhibit C

## Public Works E-mail Comments dated 9/26/2016

**From:** Alex T. Georgevitch  
**Sent:** Monday, September 26, 2016 8:57 AM  
**To:** Carla G. Paladino  
**Subject:** RE: ADA sidewalk clearance

Carla,

Per PROWAG 2011 (not adopted but we agreed to FHWA and DOJ to follow it) R302.3, the continuous width of a sidewalk shall be 4-feet. Let me know if you have any questions or comments...

Thanks

Alex

**From:** Carla G. Paladino  
**Sent:** Monday, September 26, 2016 8:18 AM  
**To:** Alex T. Georgevitch  
**Subject:** ADA sidewalk clearance

Hi Alex,

Planning is going to be working on a Council requested code amendment to allow A-frame signs in the right-of-way downtown. Can you tell me what the minimum sidewalk clearance should be? Christina mentioned to verify the dimension with you. She mentioned 4 feet below.

Thank you,

Carla

**From:** Christina H. Charvat  
**Sent:** Friday, September 23, 2016 4:52 PM  
**To:** Carla G. Paladino  
**Subject:** RE: ADA sidewalk clearance

Carla,

I believe we would go with 4ft in accordance with PROWAG but ask Alex. I don't have the authority to make that call.

Christina Charvat, Traffic Engineering Technician

City of Medford | Public Works | Engineering

200 S. Ivy | Medford, OR 97501

Mobile: (541) 821-8575

Office: (541) 774-2118

## Exhibit D

# Public Works E-mail Comments dated 10/10/2016

**From:** Christina Charvat  
**Sent:** Wednesday, October 10, 2016 10:37 AM  
**To:** Carla G. Paladino  
**Subject:** RE: A-frame signs text amendment

Carla,

I'm with Jim, except that if the sign is two sided then 12 sq ft is fine. Since they have a potential to sit somewhere in a clear triangle, near a corner or driveway, I suggest limiting the height of the sign to 3ft so it does not block sight distance of pedestrians or drivers (we typically consider a drivers eye height to be 3.5ft above roadway in related situations). Most A-frame type signs I see around town would meet this criteria so it wouldn't be imposing something unrealistic and would help minimize the complaints related to sight distance.

Christina Charvat

**From:** Carla G. Paladino  
**Sent:** Wednesday, October 05, 2016 4:10 PM  
**To:** Kelly A. Akin; Desmond M. McGeough; Sarah K. Sousa; Liz A. Conner; Dustin J. Severs; Kyle W. Kearns; Chris C. Olivier; Praline M. McCormack; Alex T. Georgevitch; Christina H. Charvat; Karl H. MacNair; Douglas E. Burroughs; Jodi K. Cope; Greg G. Kleinberg; Mary E. Montague  
**Subject:** A-frame signs text amendment

Hello All,

Please find attached language permitting A-frame signs in the right-of-way in the Central Business overlay district. This is a Council requested text amendment for this specific topic.

Take a look and let me know what you think. Jim Huber suggested possibly making the sign allowance smaller. It currently allows a 12 sq.ft. sign. What are your thoughts on size of sign? Will Engineering require any additional permits for the signs?

This amendment will go out for agency comment but I wanted to send it out before then. Please forward to others who might be interested in commenting on this that I missed. It is scheduled for hearings on 11/10/2016 (PC) and 12/15/2016 (CC).

Thank you,  
Carla

Carla G. Angeli Paladino, Planner IV  
City of Medford - Planning Department

# Exhibit E

## Planning Commission Study Session Minutes, 10/24/2016

### Excerpt

#### 1. DCA-16-121 Downtown A-frame Signs text amendment

Carla Paladino, Interim Principal Planner, stated that the A-frame signs text amendment is to provide a means to display portable signs in the right-of-way (on sidewalk) downtown.

There was a complaint filed against a downtown business owner. Code enforcement found that there were signs downtown that were not permitted to have their signs in the right-of-way. Business owners were contacted and requested to remove their signs.

City Council requested initiation of a text amendment to review portable signs in downtown.

Staff walked around downtown on Friday, October 21, 2016. They walked Sixth Street, Eighth Street, Front, Central, Bartlett and Main Street, measured sidewalks and took pictures of existing portable signs on display.

The text amendment would allow portable signs in the right-of-way when:

- Located in the Central Business (CB) overlay
- Sidewalk is a minimum of 8 feet wide
- Minimum 4 feet of unobstructed clearance from edge of sign

If a business is within the historic district a historic review would not be required for the sign.

Commissioner Foley commented that he liked the text amendment.

Commissioner McKechnie asked did staff measure the sidewalk from the back or front of the curb. Ms. Paladino reported that she measured to the front of the curb. Commissioner McKechnie suggested that the how to measure be added into the text amendment.

Commissioner McKechnie commented that it is his opinion that the intention of the 4 feet of unobstructed clearance from the edge of the sign is 4 continuous feet. Ms. Paladino replied yes.

Ms. Akin reported that the code states if there is more than 40 inches of separation it is considered to be two signs.

Commissioner Mansfield asked if there were any lobbying groups for or against the signs? Ms. Paladino stated that staff has not heard from anyone.

The meeting was adjourned at 12:49 p.m.

---

Submitted by:  
Terri L. Rozzana  
Recording Secretary

# Exhibit F

## Planning Commission Public Hearing Minutes, 11/10/2016

### Excerpt

**50.3 DCA-16-121** A Municipal Code amendment to revise the provisions of portable signs in the Central Business overlay district. (City of Medford)

Carla Paladino, Planner IV, reviewed the proposal, approval criteria 10.184(2), purpose, code history and proposed changes.

Commissioner Pulver asked if tables and chairs require approval or is it at the businesses discretion? Ms. Paladino reported that it does require approval. The Planning Department has a sidewalk café permit.

Vice Chair McFadden asked if there was a limit to the number of signs one could display. Ms. Paladino stated that the code states one per business entrance.

Vice Chair McFadden asked, could an upstairs business put an a-frame sign next to a ground floor business sign if they get a permit? What would stop one not getting a permit for advertising an event? Ms. Paladino stated that if it was complaint driven they would be taken down. Addressing the second floor issue is that it states one per entrance. If the Commission feels that staff needs to address the business entrance before going to the City Council she would like to hear that.

Commissioner Pulver and Commissioner McKechnie commented it is fine the way it is written.

The public hearing was opened and there being no testimony the public hearing was closed.

Motion: The Planning Commission, based on the findings and conclusions that all of the approval criteria are either met or not applicable, forwards a favorable recommendation for adoption of DCA-16-121 to the City Council per the staff report dated November 3, 2016, including Exhibits A through D.

Moved by: Vice Chair McFadden

Seconded by: Commissioner D'Alessandro

Voice Vote: Motion passed, 7-1, with Commissioner Mansfield voting no.



# CITY OF MEDFORD AGENDA ITEM COMMENTARY

Item No: 120.3

www.ci.medford.or.us

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**DEPARTMENT:** Planning Department  
**PHONE:** 541-774-2380  
**STAFF CONTACT:** Kelly Akin, Interim Planning Director

**AGENDA SECTION:** Public Hearings  
**MEETING DATE:** December 15, 2016

---

## **COUNCIL BILL 2016-151**

An ordinance amending sections 10.012, 10.337, and adding section 10.834 of the Medford Code to allow craft alcohol production in commercial zoning districts.

## **SUMMARY AND BACKGROUND**

A code amendment within Chapter 10 to allow brewery – public houses, microdistilleries, and small wineries in commercial zoning districts under the umbrella term craft alcohol production (DCA-16-028).

## **PREVIOUS COUNCIL ACTIONS**

There is no prior Council action history on this item. The request was presented to staff.

## **ANALYSIS**

On February 23, 2016, staff received a request to amend portions of Chapter 10 to allow for craft alcohol production from a citizen wishing to open a microdistillery. The proposal seeks to add microdistilleries as a use by right in the Community Commercial, Regional Commercial and Heavy Commercial zoning districts. In addition to adding the new use, the code amendment seeks to unify brewery – public houses, microdistilleries and small wineries into the umbrella use categorization *Craft Alcohol Producers*. The intent of unifying these three uses is to create consistency in applying special use regulations for these similar industries. The special use regulations include limiting the production facility to 5,000 square feet, requiring a full on-premises sales license in the Central Business Overlay, prohibiting crop production, requiring all alcohol production activities to be indoors, allowing for grain silos as outdoor storage and permitting signage on grain silos.

The Planning Commission heard this amendment at a public hearing on November 10, 2016. The Commission voted 8–0 to recommend approval of the ordinance. Staff was directed to further clarify size restrictions in all proposed zones, signage on grain silos and whether small wineries are permitted in commercial zones in the current or proposed Municipal Code. Small wineries are currently permitted in residential zones with the exclusive agriculture overlay. This proposal would allow them in these three specified commercial zones.

## **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 ordinance amending Chapter 10 of the Municipal Code related to craft alcohol production in commercial zones.

## **EXHIBITS**

Ordinance

Commission Report dated December 8, 2016, including Exhibits A through D

ORDINANCE NO. 2016-151

AN ORDINANCE amending sections 10.012, 10.337, and adding section 10.834 of the Medford Code to allow craft alcohol production in commercial zoning districts.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

SECTION 1. Section 10.012 of the Medford Code is amended to read as follows:

10.012 Definitions, Specific.

\*\*\*

~~Brewery — Public House. An establishment where beer is brewed and served on site. The use requires a brewery public house license issued by the State of Oregon (ORS 471.200).~~

**Brewery. An establishment in which the primary business function is the production of beer for off-site sale and distribution. The use requires a brewery-public house license issued by the State of Oregon (ORS 471.200).**

\*\*\*

**Craft Alcohol Production Terms. The following definitions apply to the craft alcohol industry, which includes the uses of brewery-public house, microdistillery and small winery.**

**Alcoholic spirits. An alcoholic beverage, which is produced through the distillation of a mixture, that is produced from alcoholic fermentation. Some common examples include: brandy, gin, rum, tequila, vodka, or whiskey.**

**Brewery — Public House. An establishment where beer is brewed and served on site. The use requires a brewery-public house license issued by the State of Oregon (ORS 471.200).**

**Craft Alcohol Production. This shall include the uses as defined by the definitions: brewery-public house, microdistillery and small winery.**

**Microdistillery. An establishment where the primary business functions are the on-site sales of alcoholic spirits produced on site. The use requires a distillery license issued by the State of Oregon (ORS 471.230).**

**Small Winery. A facility that produces wine, with a maximum annual production of 50,000 gallons, including but not limited to areas used for production, shipping and distribution, wholesale and retail sales, tasting, crushing, fermenting, blending, aging, storage, bottling, administrative functions and warehousing. The use requires a winery license issued by the State of Oregon (ORS 471.223).**

\*\*\*

**Distillery. An establishment in which the primary business function is the production of alcoholic spirits for off-site sale and distribution. The use requires a distillery license issued by the State of Oregon (ORS 471.230).**

\*\*\*

~~Small Winery. A facility that produces wine, with a maximum annual production of 50,000 gallons, including but not limited to areas used for production, shipping and distribution, wholesale and retail sales, tasting, crushing, fermenting, blending, aging, storage, bottling, administrative functions and~~

~~warehousing.~~ See craft alcohol production terms.

SECTION 2. Section 10.337 of the Medford Code is amended to read as follows:

10.337 Uses Permitted in Commercial and Industrial Zoning Districts.

\*\*\*

	C-S/P	C-N	C-C	C-R	C-H	I-L	I-G	I-H
5812 Eating and Drinking Places								
5814 - with entertainment	X	X	P	P	P	X	X	X
5815 - without entertainment	P	P	P	P	P	Ps	Ps	Ps
5816 - with outdoor eating	Ps	Ps	Ps	Ps	Ps	Ps	Ps	Ps
5817 Temporary Food Vendors	Ps	Ps	Ps	Ps	Ps	Ps	Ps	X
5818 Small Food Vendors	Ps	Ps	Ps	Ps	Ps	Ps	Ps	X
5819 <del>Brewery—Public House</del> Craft Alcohol Production	X	X	<del>P</del> Ps	<del>P</del> Ps	<del>P</del> Ps	<del>P</del> X <sup>1</sup>	<del>X</del> X <sup>1</sup>	<del>X</del> X <sup>1</sup>

The special use section references for:

<sup>1</sup>See SIC Code 208 Beverages for alcohol production in I zones.

Establishments in the industrial zones: 10.822.

Establishments with outdoor eating areas: 10.833.

~~Temporary Food Vendors corresponds with Section 10.840 Temporary Uses and Structures.~~

~~Small Food Vendors: 10.823.~~

**Classification 5817 (Temporary Food Vendors): Section 10.840.**

**Classification 5818 (Small Food Vendors): Section 10.823.**

**Classification 5819 (Craft Alcohol Production): Section 10.834.**

SECTION 3. Section 10.834 of the Medford Code is added to read as follows:

**10.834A. Craft Alcohol Production.**

The following provisions apply to all craft alcohol production businesses.

(1) Such use(s) shall not exceed 5,000 square feet of floor area devoted to the production of alcoholic beverages.

(2) Such uses, when within the Central Business Overlay, shall hold a full on-premises sales license in accordance with ORS 471.175.

- (3) **The growing and cultivating of grapes, hops and similar agricultural products shall be prohibited with the craft alcohol production use.**
- (4) **All production activities within a craft alcohol production business, including storage (except for grain silos), must be contained entirely inside the building walls of such uses.**
- (5) **Grain silos are permitted outside the walls of a craft alcohol production facility and are not considered outside storage.**
- (6) **A grain silo may have a sign, logo or other design feature that is permitted in accordance with Chapter 10. The permitted sign types for grain silos shall be a wall sign or a wall graphic.**
- (7) **The diameter of a grain silo may be added to the linear business frontage when calculating the aggregate sign area for a craft alcohol producer. The total permitted signage shall then be calculated per Section 10.1700 (2)(a)-(b).**
- (8) **If a grain silo is a part of a craft alcohol production business, it shall not occupy any parking spaces, off-street loading berths, landscaping, or other required on-site improvements as required per Chapter 10.**

PASSED by the Council and signed by me in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

APPROVED \_\_\_\_\_, 2016.

\_\_\_\_\_  
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.



size limitations from 10,000 square feet for production, to 5,000 square feet. Members of the Commission directed to have this restriction apply to all zones, not just the Central Business Overlay. Lastly, the Commission favored that any signage on the grain silo work within the current language used to restrict signage within Medford.

The Planning Commission held a hearing on November 10, 2016. Several comments in regards to the proposed amendment were raised for consideration. The restriction to 5,000 square foot for production in the Central Business Overlay was a focal point of the Commission's deliberation. The Commission felt as though not restricting the size in all proposed zones for craft alcohol production would allow for large production facilities in commercial zones that would be better suited in the City's industrial zones. The lack of clarity in regards to signage on grain silos was also raised amongst the Planning Commission.

Another comment of the Planning Commission was in regards to removing the permitted designation from the Light Industrial (I-L) zoning district, in which brewery—public houses are currently permitted. Discussion surrounding the redundancy of the permitted classification in the I-L zone was then had. Lastly, a question was raised as to whether small wineries are permitted currently in commercial zones, and upon review of the Land Development Code it would seem as though the small wineries are permitted solely in residential zones as an Exclusive Agricultural Use/Conditional Use.

To address the concerns of the Commission, staff has made the following changes for the fifth draft being presented before the City Council on December 15, 2016:

- Two definitions have been added, brewery and distillery, to clarify the industrial uses vs. the craft uses.
- The definition of small winery has been updated to require a winery license per ORS 471.223.
- A footnote has been added to the industrial zoning classifications for craft alcohol production to reference SIC Code 208 Beverages for the larger, industrial producers.
- The restriction to 5,000 square feet of production area has been made to apply to all zones in which craft alcohol production would be permitted.
- The growing and cultivating of grapes, hopes and similar agricultural products has been prohibited.
- Signage on grain silos can only be a wall sign or wall graphic.
- The diameter of the grain silo may be added to calculate the permitted wall signage of a craft alcohol producer.
- Grain silos are not omitted from the sign code.

The Commission vote was 8–0 to recommend adoption to the Council, if staff addressed the concerns of the Planning Commission from the hearing on November 10, 2016. The

findings in support of this amendment are contained in Exhibit A at the end of this report.

### Authority

This proposed plan authorization is a Class-A legislative amendment of Chapter 10 of the Municipal Code. The Planning Commission is authorized to recommend, and the City Council to approve, amendments to Chapter 10 under Medford Municipal Code §§10.102–122, 10.164, and 10.184.

### **ANALYSIS**

Craft alcohol production is a growing industry that has spurred development in cities nationwide. In 2015, the economic impact of the beer industry alone accounted for \$4.49 billion in Oregon<sup>1</sup>. In the Medford region one can see the benefits from the wine industry with countless vineyards surrounding the Rogue Valley. Given the large success of both the beer and wine industry in Oregon, the distilling of spirits presents another economic opportunity within the City of Medford.

The three industries of beer, spirit, and wine production have similarities in terms of use and infrastructure needs. Chapter 10 currently addresses alcohol production in two ways; the first being the large scale producers and the second being the small scale, or craft producers. Large scale alcohol producers, which are best represented by national chains (i.e. Jack Daniels, Anheuser-Busch, etc.), are addressed in Section 10.337 D. Manufacturing Division under the Standard Industrial Classification (SIC) code 208 Beverages. SIC code 208 allows for production of alcoholic beverages in all of the industrial zones, but none of the commercial zones. Amending SIC code 208 to allow for beverage manufacturing in commercial zones could be detrimental to other commercial uses and the infrastructure needs may not adequately be met.

Within the commercial zoning districts, Chapter 10 currently permits craft alcohol production of beer and wine with the uses of brewery–public house. Small wineries are currently allowed in the residential zoning districts on exclusive agricultural land or as a conditional use creating a very narrow window for the use within the City of Medford. In addition, microdistilleries currently aren't addressed in Chapter 10. Staff first addressed the new addition to the code as its own use category with special use regulations. This proved unfavorable as creating standards for just microdistilleries and not brewery–public houses and small wineries was inconsistent. Given the similarities in the three industries, staff worked toward drafting an umbrella code that addressed the different uses equally, thus SIC 5819 Craft Alcohol Production was created.

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<sup>1</sup> (<http://oregoncraftbeer.org/facts/>)

Rather than create inconsistencies in Chapter 10 the three uses could now be grouped together and allow for special use regulations to apply across the similar industries. The intent of the regulations are to:

- Limit the size of the facilities within commercial zoning districts
- Require full on-premises sales licensing in accordance with ORS 471.175 in the Central Business Overlay
- Prohibit the growing of grapes, hops and similar products
- Restrict outdoor storage to grain silos only
- Encourage signage on grain silos

### **RECOMMENDATION**

The Planning Commission recommends adopting the proposed amendment based on the analyses, findings, and conclusions in the Commission Report dated December 8, 2016, including Exhibits A through D.

### **EXHIBITS**

- A Findings and Conclusions
- B Proposed Amendment
- C Minutes, Planning Commission Study Session (10-24-2016) and Public Hearing (11-10-2016)
- D Public comments

**CITY COUNCIL AGENDA:** December 15, 2016

# Exhibit A

## Findings and Conclusions

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### FINDINGS AND CONCLUSIONS

The criteria that apply to code amendments are in Medford Municipal Code §10.184(2). The criteria are rendered in italics; findings and conclusions in roman type.

*Land Development Code Amendment. The Planning Commission shall base its recommendation and the City Council its decision on the following criteria:*

*10.184 (2) (a). Explanation of the public benefit of the amendment.*

#### Findings

Currently the City of Medford permits brewery–public houses and small wineries within commercial zones; not only are these uses permitted but there are several breweries, wineries and bars scattered throughout the City’s commercial districts (some examples include: BricktownE Brewery, Pallet Wine Co., Portal Brewing Co.). Microdistilleries function much like a brewery–public house and would mirror the operations of a commercial enterprise, not an industrial enterprise. By creating craft alcohol production as its own use, the City is able to differentiate between industrial and commercial producers, thus preserving the integrity of the commercial zoning district. This preservation is achieved by using special use regulations for craft alcohol production to regulate the scale of production.

#### Conclusions

The addition of craft alcohol production to Chapter 10 increases economic opportunities in Medford with the addition of microdistilleries and creates unified standards for the three industries of beer, spirit and wine production.

*10.184 (2) (b). The justification for the amendment with respect to the following factors:*

- 1. Conformity with goals and policies of the Comprehensive Plan considered relevant to the decision.*

#### Findings

The following goals, policies, and implementation measures are from the Economic Element.

*Goal: To actively stimulate economic development and growth that will provide opportunities to diversify and strengthen the mix of economic activity in the City of Medford.*

*Policy 1-1: The City of Medford shall strengthen its role as the financial, medical, tourist, governmental and business hub of Southern Oregon and shall build on its comparative advantages in the local and regional marketplace.*

*Implementation 1-1(c): Provide incentives for businesses that produce value-added products to expand or locate in the community.*

*Implementation 1-1(f): Provide incentives for entrepreneurial small businesses to start up and/or expand in the City.*

### Conclusions

Craft alcohol production is a young industry and its success can be best viewed in looking at the craft beer industry. Expanding this use to include spirits fits within the City's goals of expanding economic growth.

2. *Comments from applicable referral agencies regarding applicable statutes or regulations.*

### Findings

**Fire Department** – Deputy Chief Greg Kleinberg spoke to a buffering area of 5 feet being required for grain silos. He felt that it was not needed in the code as the Oregon Structural Specialty Code already requires fire separation for grain silos and restaurants that would dictate any sort of needed separation.

### Conclusions

Since the Oregon Structural Specialty Code requires fire separation for grain silos, staff felt as though no update to Chapter 10 was needed to address this concern.

3. *Public comments.*

### Findings

See Exhibit C, Industry Questionnaire – Immortal Spirits (Enrico Carini)

### Conclusions

The public comments received came directly from a local representative in the craft alcohol production industry. From this, staff was able to conclude that there are little impacts to the infrastructure system and that the typical size of a craft producer, specifically distilling, can be relatively small (2,400 square feet of gross floor area and about 1,500 – 2,000 gallons of alcoholic spirits produced a year).

4. *Applicable governmental agreements.*

Findings

Staff could find no agreement that is related to how the City elects to regulate businesses within its jurisdiction.

Conclusions

This criterion does not apply.

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# Exhibit B

## Proposed Amendment

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### [Part 1. Definitions]

10.012 Definitions, Specific

\* \* \*

~~**Brewery — Public House.** An establishment where beer is brewed and served on site. The use requires a brewery public house license issued by the State of Oregon (ORS 471.200).~~

**Brewery.** An establishment in which the primary business function is the production of beer for off-site sale and distribution. The use requires a brewery–public house license issued by the State of Oregon (ORS 471.200).

\* \* \*

Coverage. The portion of a parcel or lot’s land area covered by structures.

**Craft Alcohol Production Terms.** The following definitions apply to the craft alcohol industry, which includes the uses of brewery–public house, microdistillery and small winery.

**Alcoholic spirits.** An alcoholic beverage, which is produced through the distillation of a mixture, that is produced from alcoholic fermentation. Some common examples include: brandy, gin, rum, tequila, vodka, or whiskey.

**Brewery — Public House.** An establishment where beer is brewed and served on site. The use requires a brewery–public house license issued by the State of Oregon (ORS 471.200).

**Craft Alcohol Production.** This shall include the uses as defined by the definitions: brewery–public house, microdistillery and small winery.

**Microdistillery.** An establishment where the primary business functions are the on–site sales of alcoholic spirits produced on site. The use requires a distillery license issued by the State of Oregon (ORS 471.230).

**Small Winery.** A facility that produces wine, with a maximum annual production of 50,000 gallons, including but not limited to areas used for production, shipping and distribution, wholesale and retail sales, tasting, crushing, fermenting, blending, aging, storage, bottling, administrative functions and warehousing. The use requires a winery license issued by the State of Oregon (ORS 471.223).

\* \* \*

**Distillery.** An establishment in which the primary business function is the production of alcoholic spirits for off-site sale and distribution. The use requires a distillery license issued by the State of Oregon (ORS 471.230).

\* \* \*

~~Small Winery. A facility that produces wine, with a maximum annual production of 50,000 gallons, including but not limited to areas used for production, shipping and distribution, wholesale and retail sales, tasting, crushing, fermenting, blending, aging, storage, bottling, administrative functions and warehousing. See craft alcohol production terms.~~

\* \* \*

## [Part 2. Use Categorization]

10.337 Uses Permitted in Commercial and Industrial Zoning Districts.

\* \* \*

58 EATING AND DRINKING PLACES. This major group includes establishments selling prepared foods and drinks for consumption on the premises; and also lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption. Restaurants, lunch counters, and drinking places operated as a subordinate service facility by other establishments are not included in this group unless they are operated as leased departments by outside operators. Thus, restaurants and lunch counters operated by hotels are classified in Services, Major Group 70; those operated by department stores in Major Group 53. Bars and restaurants owned by and operated for members of civic, social, and fraternal associations only are classified in Industry 8641.

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C-S/P C-N C-C C-R C-H I-L I-G I-H

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	C-S/P	C-N	C-C	C-R	C-H	I-L	I-G	I-H
5812 Eating and Drinking Places								
5814 - with entertainment	X	X	P	P	P	X	X	X
5815 - without entertainment	P	P	P	P	P	Ps	Ps	Ps
5816 - with outdoor eating	Ps	Ps	Ps	Ps	Ps	Ps	Ps	Ps
5817 Temporary Food Vendors	Ps	Ps	Ps	Ps	Ps	Ps	Ps	X
5818 Small Food Vendors	Ps	Ps	Ps	Ps	Ps	Ps	Ps	X
<del>5819 Brewery—Public House</del>	<del>X</del>	<del>X</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>P</del>	<del>X</del>	<del>X</del>
<b>5819 Craft Alcohol Production</b>	<b>X</b>	<b>X</b>	<b>Ps</b>	<b>Ps</b>	<b>Ps</b>	<b>X<sup>1</sup></b>	<b>X<sup>1</sup></b>	<b>X<sup>1</sup></b>

The special use section references for:

<sup>1</sup>See SIC Code 208 Beverages for alcohol production in I zones.

Establishments in the industrial zones: 10.822.

Establishments with outdoor eating areas: 10.833.

~~Temporary Food Vendors corresponds with Section 10.840 Temporary Uses and Structures.~~

~~Small Food Vendors: 10.823.~~

**Classification 5817 (Temporary Food Vendors): Section 10.840.**

**Classification 5818 (Small Food Vendors): Section 10.823.**

**Classification 5819 (Craft Alcohol Production): Section 10.834 A.**

\* \* \*

### [Part 3. Use Regulations]

#### SPECIAL USE REGULATIONS. (10.811 - 10.838)

##### 10.834 A Craft Alcohol Production

The following provisions apply to all craft alcohol production businesses.

(1) Such use(s) shall not exceed 5,000 square feet of floor area devoted to the production of alcoholic beverages.

(2) Such uses, when within the Central Business Overlay, shall hold a full on-premises sales license in accordance with ORS 471.175.

(3) The growing and cultivating of grapes, hops and similar agricultural products shall be prohibited with the craft alcohol production use.

**(4) All production activities within a craft alcohol production business, including storage (except for grain silos), must be contained entirely inside the building walls of such uses.**

**(5) Grain silos are permitted outside the walls of a craft alcohol production facility and are not considered outside storage.**

**(6) A grain silo may have a sign, logo or other design feature that is permitted in accordance with Chapter 10. The permitted sign types for grain silos shall be a wall sign or a wall graphic.**

**(7) The diameter of a grain silo may be added to the linear business frontage when calculating the aggregate sign area for a craft alcohol producer. The total permitted signage shall then be calculated per Section 10.1700 (2)(a)-(b).**

**(8) If a grain silo is a part of a craft alcohol production business, it shall not occupy any parking spaces, off-street loading berths, landscaping, or other required on-site improvements as required per Chapter 10.**

\* \* \*

## Exhibit C

# Planning Commission Study Session (10-24-2016) & Public Hearing (11-10-2016)

[Meeting minutes]

From Study Session on **October 24, 2016**

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The study session of the Medford Planning Commission was called to order at noon in the Lausmann Annex Room 151-157 on the above date with the following members and staff in attendance:

**Commissioners Present**

David McFadden, Vice Chair  
Tim D'Alessandro  
David Culbertson  
Joe Foley  
Bill Mansfield  
Mark McKechnie  
Jared Pulver

**Staff Present**

Kelly Akin, Interim Planning Director  
Kevin McConnell, Deputy City Attorney  
Carla Paladino, Interim Principal Planner  
Kyle Kearns, Planner II

**Commissioner Absent**

Patrick Miranda, Chair, Excused Absence

**Subjects:**

**1. DCA-16-026 Craft Alcohol Production in Commercial Districts**

Kelly Akin, Interim Planning Director, reported that they had interviews for the Planning Director last week. They will make an announcement either this week or next week.

Ms. Akin introduced Kyle Kearns, Planner II, in the long range division.

Mr. Kearns reported that craft alcohol production falls under a previous code amendment request initiated by an individual wanting to open a micro-distillery (craft distillery) in a commercial zone. The Planning Commission and staff discussed the code amendment during the study session on March 24, 2016. Staff was directed to begin working on the code amendment for micro-distilleries, as capacity allowed. The shift to

a broader code amendment that covers all “craft” or “boutique” alcohol producers has grown to include brewery-public houses (permitted), micro-distilleries, and small wineries (permitted) allowing for consistent land use regulations of similar industries.

In order to properly address the craft alcohol industry, new definitions needed to be added to the Medford Land Development Code. Staff decided to mirror the format used for marijuana-related businesses by creating an umbrella definition titled Craft Alcohol Production Terms that includes two existing definitions (brewery-public house and small winery) as well as three new definitions (alcoholic spirits, craft alcohol production, and micro-distillery).

The districts that are being proposed to be permitted in are Community Commercial, Regional Commercial and Heavy Commercial. Currently brewery-public houses are permitted in Light Industrial. Staff is proposing to take that designation out because breweries, distilleries and wineries are permitted in industrial districts with or without this designation.

Staff is proposing Special Use Regulations in order to create consistent standards for three similar industries. When located within the Central Business Overlay, such use shall not exceed 10,000 square feet of floor area devoted to the production of alcoholic beverages.

Commissioner Foley asked how staff arrived at that number. It seems like a large number. Mr. Kearns reported that staff looked at different micro-distilleries throughout Oregon, local examples and examples outside of Oregon. They ranged from 1,500 square feet to 30,000 square feet.

Such use shall hold a full on-premises sales license that requires a kitchen.

All production activities within a Craft Alcohol Production business, including storage (except for grain silos), must be contained entirely inside the building walls of such uses.

Grain silos are permitted outside of a Craft Alcohol Production facility and are not considered outside storage.

A grain silo may have a sign, logo, or other design feature that is permitted in addition to any signage meeting the standards of Article VI of Chapter 10. [Signage on grain silo does not count towards a parcels overall signage and shall not exceed X square feet].

**NOTE:** The line in brackets requires direction from the Planning Commission.

Some final thoughts were:

- Addition of micro-distilleries expands economic opportunities
- Allows for businesses with evening hours in commercial zones

- Distilling is similar to brewing (brewing is already permitted)
- Consolidation of craft alcohol producers creates consistency within land use regulations

Vice Chair McFadden inquired whether previously there was a size limit. Mr. Kearns stated that discussion took place at the March study session. Staff moved away from that discussion because the Oregon Licensing has its limits. One can only grow so big before they are required to get more licensing from Oregon that would put them in a different category.

Commissioner Foley asked what the limit is. Mr. Kearns replied that the distilling does not have a limit, but could potentially be added. Brewing is 50,000 gallons.

Commissioner Foley asked if there is only one distilling license or multiple. Mr. Kearns reported there is only one distillery license.

Commissioner Foley stated that on their tour there was discussion regarding fire hazard of raw alcohol coming into the facility. Should there be a limit of high proof alcohol being brought to start with?

Commissioner Culbertson reported that alcohol has reached 180 proofs after being distilled. If it is being brought in as a fermented product the alcohol content is considerably less.

Commissioner Foley stated that it depends on what is being brought in.

Commissioner Culbertson commented that is like triple distilled. They are bringing the alcohol in pre-condensed and then double or triple distill it.

Mr. Kearns reported that is common.

Commissioner D'Alessandro stated that these are reportable quantities to the fire department. Anything flammable or hazardous after a certain threshold has to be reported to the fire department. They would have a say in what can be stored in whatever zoning district. That may already exist.

Vice Chair McFadden has a concern with the separation between buildings.

Commissioner Pulver stated that a micro-distillery is required to have a license for a restaurant. BricktownE has a bar restaurant and brew beer in the back. That is what he envisions in a commercial zone. It makes sense if there is food and beverage. It is his opinion that if it is just making liquor it does not fit in commercial; maybe heavy commercial. It is more of an industrial use. There are enough light industrial spaces where that would work.

Mr. Kearns reported that if it is required for a full on premises sales then one has to serve a menu for at least three hours in the entire day. It is a requirement that at some point they would have to serve food with at least five items on the menu.

Commissioner Foley asked if these are conditional use. Mr. Kearns replied they are permitted with special regulations.

Commissioner Foley asked what does that mean. Mr. Kearns reported there are certain standards that are required for them to be permitted such as are under 10,000 square feet and full on premises license.

Kevin McConnell, Deputy City Attorney, reported that the City did the same thing with the marijuana licensing. They are permitted special use. They have specific requirements.

Commissioner Pulver stated that 10,000 square feet for just the operational part is pretty big. He is more comfortable with 5,000 and adjusting if needed.

Commissioner Culbertson asked what is the State standard for annual production of a small distillery. Mr. Kearns replied they do not have one for distilleries.

Commissioner Culbertson stated that craft brew facilities make sense. They are coupling with the brewery and eatery. He is curious about the distilled spirits. One can get "wasted" quickly without having the food component. It is not necessarily the square footage that is the concern it is the output. If the State does not have standards as far as production output of hard alcohol distilleries then that is where staff and the Commission need to focus.

Mr. McConnell asked under this code and given the permission could a micro-distillery sell other kinds of alcohol or would it only be hard liquor? Mr. Kearns stated that with a full on premises license it basically becomes a bar.

Ms. Akin reported that staff can check with the Fire Department of fire code restrictions that could help in determining the size particularly downtown. Also, limiting size is much easier from a staff perspective than output. There is no way for staff to know how much they are producing.

Commissioner McKechnie stated that his experience with the fire code is it is limitation on volume regardless of the zoning district.

Ms. Akin clarified that the 10,000 square foot limit is only in the Central Business Overlay (downtown).

Mr. Kearns stated that staff needs direction on signage on grain silos. Should there be a size limitation or should it go through the regular sign permit process?

Commissioner Foley is concerned that if original business goes out of business the silo remains it becomes an unrestricted monument sign. The sign variance only applies when in business.

Ms. Akin stated that the sign code in the commercial districts is 1 1/2 to 2 square feet for every linear foot of business frontage. One could measure the diameter of the silo and work it that way in order to be comparable.

Commissioner McKechnie suggested a special condition that an easement runs with the user instead of the land.

Commissioner Mansfield stated that is called easement engross as opposed to easement of pertinent.

Commissioner Pulver stated that he prefers a regular sign permit process.

It was the consensus of the Planning Commission to limit the square footage to 5,000 in all commercial zones.

---

**From Public Hearing on November 10, 2016**

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The regular meeting of the Planning Commission was called to order at 5:36 PM in the City Hall Council Chambers on the above date with the following members and staff in attendance:

**Commissioners Present**

Patrick Miranda, Chair  
David McFadden, Vice Chair  
Tim D'Alessandro  
David Culbertson  
Joe Foley  
Bill Mansfield  
Mark McKechnie  
Jared Pulver

**Staff Present**

Kelly Akin, Interim Planning Director  
Kevin McConnell, Deputy City Attorney  
Alex Georgevitch, City Engineer  
Greg Kleinberg, Fire Marshal  
Terri Rozzana, Recording Secretary  
Kyle Kearns, Planner II  
Carla Paladino, Planner IV  
Praline McCormack, Planner II

**50.2 DCA-16-028** A code amendment within Articles I, III, and V to allow brewery–public houses, micro distilleries, and small wineries in commercial zoning districts under the umbrella term of “craft alcohol production.” (City of Medford)

Kyle Kearns, Planner II, reviewed the purpose of the amendment, read the approval criteria 10.184(2) and reviewed the proposal.

Commissioner Pulver asked, does the full on-premises sales license relate to having a certain amount of food? Mr. Kearns replied yes. There has to be at least five menu items served for a minimum of three hours a day.

Commissioner Pulver asked, does the proposed size limitation for the production area only apply to the Central Business District? Mr. Kearns reported as it reads now that is correct.

Commissioner Pulver asked, is a small winery a current use and allowed in the proposed zoning areas? Mr. Kearns replied that is correct.

Commissioner Pulver asked, does the special use regulation apply to all uses under craft alcohol production term? Mr. Kearns replied yes.

Commissioner Pulver stated that grain silos can have signage. He is not sure how it is measured and not in lieu of building signage. Is that correct? Mr. Kearns stated that currently if there are two street frontages then two signs are allowed and permitted to have it on the grain silo. The silo would have to fall into the height restrictions that the zoning district allows.

Commissioner Pulver stated that in Exhibit C the questionnaire that Immortal Spirits filled out mentions having odor issues. Is there a jurisdiction restriction on that issue? Mr. Kearns stated that in terms of odor, the code only addresses marijuana.

Commissioner Foley reported that when the participants of the tour had a discussion with the gentleman from Immortal Spirits he left Commissioner Foley with the impression that the issue was more a persnickety neighbor more than a general sense in the area. Mr. Kearns confirmed the statement.

Commissioner McKechnie addressed Commissioner Pulver's question regarding signage. It is his opinion the signage credited is based on the frontage rather than the bulk of the building.

Commissioner McKechnie stated that in Section 10.337 breweries and public houses are allowed in the light industrial zone. He remembers Mr. Kearns stating that was redundant. Where else does craft alcohol production appear that would allow it in the industrial zone? Is it in another category? Mr. Kearns replied yes. It would be SIC Code 208 Beverage Production.

Commissioner McKechnie asked how would he know that? It is his opinion that instead of having an X where craft alcohol production is not allowed that NA would be more appropriate. Mr. Kearns reported that he has not seen that anywhere else in the code.

Chair Miranda stated there could also be a footnote cross referencing SIC Code 208.

The public hearing was opened and there being no testimony the public hearing was closed.

Motion: The Planning Commission, based on the findings and conclusions that all of the approval criteria are either met or not applicable, initiates the amendment, and forwards a favorable recommendation for adoption of DCA-16-028 to the City Council per the staff report dated November 3, 2016, including Exhibits A through C.

Moved by: Vice Chair McFadden

Seconded by: Commissioner McKechnie

Commissioner Pulver stated the production restriction of 5,000 square feet should be in all the zoning districts, not just the central business district. He has a concern about the three uses being similar and fitting them into one. He is not clear on the signage. He is in favor of the silos having signage. He does not know if it is clear as to the limitations of having signs on both, the amount of square footage allowed based on the size of the building frontage or based on the size of the silo. It is his opinion there is interpretation yet to be made on where exactly silo signage fits in the code. The smell issue was glossed over. He does not know how big of an issue smell is or is not. It is his opinion that this warrants more discussion and clarity.

Commissioner Mansfield asked Commissioner Pulver if he was suggesting postponing this decision and continuing it to another meeting, or to vote no, and would he care to make a motion? Commissioner Pulver replied that he would be agreeable continuing it until he gets clarity on some of the issues. There is already a motion on the table.

Mr. McConnell stated that he would not tell the Commission how they should conduct their business, but another option is to add that to the recommendation as to figure out an answer to Commissioner Pulver's question. They can address that at the City Council level and have staff ready to address that.

Friendly Amendment made by Commissioner Pulver: The production area is limited to 5,000 square feet in all zoning districts proposed and that staff provide clarity of the signage issue to City Council.

Commissioner McKechnie as seconder of the motion is not in favor of the friendly amendment.

Commissioner Foley asked what is the reason for restricting the size only in the central business overlay?

Commissioner Pulver commented that if the Planning Commission is going to approve the use in commercial zones, there are offices, medical offices, etc., that a 10,000 square foot brewery with a small tasting room and nachos served would not be acceptable for office type uses.

Commissioner McKechnie reported that it is one thing to be in the industrial area as a full on production. What is being discussed is intended to be in the commercial areas to be more of a boutique operation. In the study session it was discovered that 10,000 square feet would be closer to full on production. The 5,000 square foot limitation for production in commercial zones seemed to be appropriate for a boutique operation.

Commissioner Foley commented that the 5,000 square foot limitation is only for the Central Business overlay. The 5,000 square foot limitation goes away outside of the Central Business overlay. The question is why staff feels the central business overlay is the right restriction? Mr. Kearns reported that the thinking behind that was that it would fit the characteristics of the downtown. There are not a lot of 10,000 square foot buildings in the downtown.

Commissioner Foley responded that the goal is to allow craft breweries, microdistillers and small wineries to exist, which the Planning Commission is in favor of. If they are allowed in commercial zones, to keep them in the craft world, is why they are restricted to 5,000 square feet for production. He is struggling with why restricting it only to the Central Business overlay and not applying it to all zoning districts.

Commissioner McKechnie wanted to make sure that a footnote cross referencing SIC Code 208 on industrial zones is included in the text amendment.

## Exhibit D

# Industry Questionnaire

[Immortal Spirits – Enrico Carini September, 02 2016]

**From:** Enrico Francesco Carini [REDACTED]

**Sent:** Friday, September 02, 2016 3:45 PM

**To:** Kyle W. Kearns

**Subject:** Our Distillery

Hi Kyle, Enrico Carini here -

Thanks for taking an interest in our business, we're proud to be part of an ever blossoming Medford and look forward to what the future may have to offer.

**Name of Business:** Immortal Spirits & Distilling Company

**Name of Contact/Interviewee:** Enrico Carini Phone: [REDACTED]

**Contact Email:** [REDACTED]

**General Information about Business**

**Production Output (Circle One - Gallons or Barrels):** Approx 1500-2000 gallons/year

**Square Footage of Distillery:** Approx 2400sq/ft

**Address of Distillery (if different than tasting room):** 3582 S. Pacific Hwy Medford

**Questions**

**1) Would you consider your "micro-distilling" operation a typical operation in terms of size, output and operations? If not, what makes your operation different?**

Smaller than typical. This is very much a grassroots operation, we built most of the equipment ourselves and started this as a hobby. We have very little capital - working or otherwise and no distribution out of state, also with all of the current laws and taxes in place the margins for us small output distilleries are very low

**2) Have you received complaints from neighboring businesses, residents or other uses surrounding a distillery?**

Not at our current address. We were evicted from our first location (the business park behind WinCo on Barnett) because the neighbors did not like the smell of the cooking wort (liquid mash).

**3) When starting your business, what was some of the red tape you had to overcome?**

Compliance with the Health and Fire Departments besides the obvious licensing with the OLCC

**4) How often do you receive deliveries? How large of deliveries are they (UPS truck, semi-truck, pick up own supplies, Etc...)**

At times we do need enough room for very large deliveries i.e. Semi Truck

**5) How is your waste from production handled? Waste would include things such as the mash, water, head & tail of distillation process.**

Spent mash is collected by the cow farmer that provides us with the beef we use at the tasting room. Water is released down the drain. Heads and Tails are used again in a tertiary distillation and then used to clean equipment.

**6) Are there things unique to the Medford area that should be considered when drafting legislation for permitting distilleries?**

We are unique to Medford. We are Medford's first Distillery and the people of Medford love us as much as we love them. The Mythical Spirits Proposal earlier this year would've allowed investors from outside the area to setup only blocks from us with their distillery and tasting room as one whereas we didn't have that option.

**7) Is there anything that you would like to add that was not addressed?**

I think that about covers it, let me know if you'd like more information or clarification on anything and thanks again for taking interest in our business.

Cheers!

Enrico F Carini

Immortal Sprits - Co-Owner/Founder