



Agenda Item

April 4, 2012

TO: City Council
FROM: Kathy Figley, Mayor
SUBJECT: **Park Board Appointment**

The following appointment is made, subject to the approval of the Council. Please forward any adverse comments to me prior to the Council meeting on Monday, April 9, 2012. No reply is required if you approve of my decision.

PARK BOARD COMMITTEE

Appointment

- Sofie Velasquez – Student Position

PROCLAMATION

DAYS OF REMEMBRANCE

April 15-22, 2012

WHEREAS, the Holocaust was the state-sponsored, systematic persecution and annihilation of 6 million European Jews by Nazi Germany and its collaborators between 1933 and 1945; and

WHEREAS, millions more were also targeted for destruction or decimation for other racial, ethnic, national, political and religious reasons under Nazi tyranny; and

WHEREAS, the history of the Holocaust offers an opportunity to reflect on the moral responsibilities of individuals, societies, and governments; and

WHEREAS, we the people of the City of Woodburn should always remember the terrible events of the Holocaust and remain vigilant against hatred, persecution, and tyranny; and

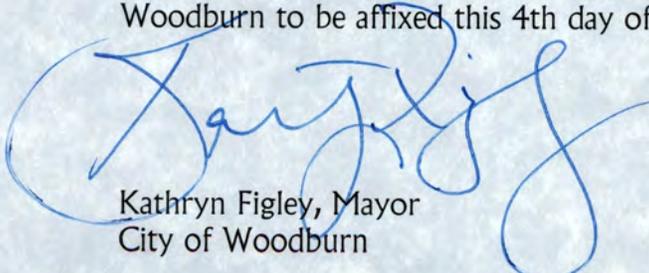
WHEREAS, we the people of the City of Woodburn should actively rededicate ourselves to the principles of individual freedom in a just society; and

WHEREAS, the Days of Remembrance have been set aside for the people of the City of Woodburn to remember the victims of the Holocaust as well as to reflect on the need for respect of all peoples; and

WHEREAS, pursuant to an Act of Congress, the United States Holocaust Memorial Council designates the Days of Remembrance of the Victims of the Holocaust to be Sunday, April 15, through Sunday, April 22, 2012, including the Day of Remembrance known as Yom Hashoah, April 19, 2012;

NOW, THEREFORE, I, Kathryn Figley, Mayor of the City of Woodburn, do hereby proclaim the week of Sunday, April 15, through Sunday, April 22, 2012, as Days of Remembrance in memory of the victims of the Holocaust and in honor of its survivors as well as the rescuers and liberators, and further proclaim that we, as citizens of the City of Woodburn, should work to promote human dignity and confront hate whenever and wherever it occurs.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Woodburn to be affixed this 4th day of April 2012.


Kathryn Figley, Mayor
City of Woodburn



**COUNCIL MEETING MINUTES
MARCH 26, 2012**

0:00 **DATE COUNCIL CHAMBERS, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, MARCH 26, 2012.**

CONVENED The meeting convened at 7:05 p.m. with Mayor Figley presiding.

ROLL CALL

Mayor Figley	Present
Councilor Cox	Present
Councilor Lonergan	Present
Councilor McCallum	Present
Councilor Morris	Absent
Councilor Pugh	Present
Councilor Schmidt	Present

Staff Present: City Administrator Derickson, City Attorney Shields, Public Works Director Brown, Economic & Community Development Director Hendryx, Finance Director Palacios, Community Services Director Row, Police Captain Alexander, Police Captain Garrett, Human Resources Director Hereford, Asst. City Engineer Liljequist Recorder Shearer.

0:01 **ANNOUNCEMENTS**

A. The filing period for Mayor and Council positions will open May 30, 2012. Positions to be voted upon at the November 6, 2012 general election are as follows:

Mayor:	At-Large position (2-year term)
Councilor – Ward I	Precinct 815 (4-year term)
Councilor – Ward II	Precinct 825 (4-year term)
Councilor – Ward VI	Precinct 865 (4-year term)

Candidate filing forms and instructions are available from the City Recorder and are posted on the City website.

B. Woodburn’s Annual Easter Egg Hunt will be at Legion Park on Thursday, April 5 at 5:30 pm.

0:02 **COMMUNITY/GOVERNMENT REPORTS**

A. Woodburn Downtown Unidos – Erubio Valladares, President, provided an update on Downtown Unidos activities.

**COUNCIL MEETING MINUTES
MARCH 26, 2012**

0:04

CONSENT AGENDA

- A. Approve Woodburn City Council minutes of February 27, 2012,
 - B. Accept Planning Commission minutes of September 8, 2011,
 - C. Accept Recreation and Park Board minutes of March 12, 2012
 - D. Accept the Crime Statistics report for February 2012, and
 - E. Accept the informational Update on the PSAP Consolidation.
- McCallum/Pugh...** approve the consent agenda as presented. Motion passed unanimously.

0:05

COUNCIL BILL NO. 2887 – A RESOLUTION DIRECTING THAT THREE “NO PARKING” SIGNS BE INSTALLED ON MERIDIAN DRIVE JUST SOUTH OF THE INTERSECTION OF HAZELNUT DRIVE AND MERIDIAN DRIVE.

McCallum introduced Council Bill No 2887. Recorder Shearer read the bill by title only since there were no objections from the Council. Several members of the neighborhood spoke regarding this resolution. Some questioned the need for three signs and suggested using curb painting or a reduced number of signs. Some spoke regarding a request for a stop sign at the intersection of Hazelnut Dr and Meridian Dr due to concerns about traffic speeds and volumes. Asst. City Engineer Liljequist explained the reasoning behind the proposed solution and agreed that curb painting may be sufficient to address the parking issue. He stated that the traffic study completed by Public Works did not reveal traffic concerns sufficient to warrant a stop sign at the intersection. Members of the neighborhood questioned whether the study was completed during peak usage (when School was in session). City Administrator Derickson agreed to have Public Works complete another traffic survey, when school was in session, and communicate with the neighborhood with the results.

On roll call vote for final passage, the bill passed unanimously. Mayor Figley declared Council Bill No. 2887 duly passed.

0:37

COUNCIL BILL NO. 2888 – A RESOLUTION AUTHORIZING THE DEPARTMENT OF COMMUNITY SERVICES TO APPLY FOR A LOCAL GOVERNMENT GRANT FROM THE OREGON PARKS AND RECREATION DEPARTMENT FOR THE INSTALLATION OF A PLAYGROUND AT LEGION PARK AND DELEGATING AUTHORITY TO THE DIRECTOR OF COMMUNITY SERVICES TO SIGN THE APPLICATION.

McCallum introduced Council Bill No 2888. Recorder Shearer read the bill by title only since there were no objections from the Council. On roll call vote for final passage, the bill passed unanimously. Mayor Figley declared Council Bill No. 2888 duly passed.

**COUNCIL MEETING MINUTES
MARCH 26, 2012**

0:38 **CONSTRUCTION CONTRACT AWARD WASTEWATER TREATMENT PLANT ANTENNA TOWER PROJECT**

Cox/Schmidt... award a construction contract for the Wastewater Treatment Plant Microwave Antenna Tower Project to Day Wireless Systems in the amount of \$115,005.90. Motion passed unanimously.

0:40 **ACCEPTANCE OF A 5 FEET WIDE PUBLIC UTILITY EASEMENT ALONG THE FRONTAGE OF 295 HARDCASTLE AVENUE (TAX LOT 051W07DD02200)**

Lonergan/McCallum... accept a five feet wide Public Utility Easement granted by Wilbur-Ellis Company, property owners of 295 Hardcastle Avenue in Woodburn, Oregon. Motion passed unanimously.

0:41 **FY 2012/13 FINANCIAL PLAN**

Pugh/Lonergan... adopt the attached FY 2012/2013 Financial Plan (Budget Policies & Reduction Strategy and 5-Year Financial Forecast). Motion passed unanimously.

0:46 **CITY ADMINISTRATOR'S REPORT**

- Reminder of Executive Session following the meeting.

0:46 **MAYOR AND COUNCIL REPORTS**

- High School Essay Contest winners will be announced next week.
- Councilor Schmidt commented that there is a lot of shrubs and trees that are blocking sightlines in the right of way. He would like the police and code enforcement officers to notify property owners that they need to be trimmed.
- Councilor Schmidt is also concerned about potholes on Highway 99E.
- Councilor Schmidt would like the portion of Cleveland Street between City Hall and Settlemier to be a designated no parking zone.

0:49 **EXECUTIVE SESSION**

Mayor Figley entertained a motion to adjourn into executive session under the authority of ORS 192.660(2)(h) and ORS 192.660(2)(f). **Lonergan/Cox...** adjourn to executive session under the statutory authority cited by the Mayor. The motion passed unanimously

The Council adjourned to executive session at 7:55 pm and reconvened at 8:15 pm. Mayor Figley stated that no action was taken by the Council while in executive session.

**COUNCIL MEETING MINUTES
MARCH 26, 2012**

ADJOURNMENT

Pugh/McCallum... meeting be adjourned. The motion passed unanimously.
The meeting adjourned at 8:15 p.m.

APPROVED _____
KATHRYN FIGLEY, MAYOR

ATTEST _____
Christina M. Shearer, Recorder
City of Woodburn, Oregon

DRAFT

**EXECUTIVE SESSION
COUNCIL MEETING MINUTES
March 26, 2012**

DATE. CONFERENCE ROOM, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, MARCH 26, 2012.

CONVENED. The Council met in executive session at 8:00 p.m. with Mayor Figley presiding.

ROLL CALL.

Mayor	Figley	Present
Councilor	Cox	Present
Councilor	Lonergan	Present
Councilor	McCallum	Present
Councilor	Morris	Absent
Councilor	Pugh	Present
Councilor	Schmidt	Present

Staff Present: City Administrator Derickson, City Attorney Shields, City Recorder Shearer.

Media Present: None.

Mayor Figley reminded the Councilors, media and staff that information discussed in executive session is not to be discussed with the public.

The executive session was called to:

- To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed pursuant to ORS 192.660(2)(h)
- To consider records that are exempt by law from public inspection pursuant to ORS 192.660(2)(f).

ADJOURNMENT.

The executive session adjourned at 8:12 p.m.

APPROVED _____
KATHRYN FIGLEY, MAYOR

ATTEST _____
Christina M. Shearer, Recorder
City of Woodburn, Oregon

**COUNCIL/PLANNING COMMISSION WORKSHOP MEETING
MINUTES
MARCH 26, 2012**

DATE COUNCIL CHAMBERS, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, MARCH 26, 2012.

CONVENED The meeting convened at 6:00 p.m. with Mayor Figley presiding.

ROLL CALL

Mayor	Figley	Present
Councilor	Cox	Present
Councilor	Loneragan	Present
Councilor	McCallum	Present
Councilor	Morris	Absent
Councilor	Pugh	Present
Councilor	Schmidt	Present
Commissioner	Bandelow	Present
Commissioner	Corning	Present
Commissioner	Ellsworth	Present
Commissioner	Gregorieff	Present
Commissioner	Jennings	Present
Commissioner	Lima	Present
Commssioner	Piper	Present

STAFF PRESENT: City Administrator Derickson, City Attorney Shields, Public Works Director Brown, Economic & Community Development Director Hendryx, Community Services Director Row, Recorder Shearer.

PRESENTATION

Economic & Community Development Director Hendryx provided a presentation on the proposed 99E Corridor Plan. Council and Commission members asked questions and provided comments and direction periodically throughout the workshop. No action was taken by Council or the Planning Commission.

ADJOURNMENT

The workshop adjourned 6:55 pm.

APPROVED

KATHRYN FIGLEY, MAYOR

ATTEST

Christina Shearer, Recorder
City of Woodburn, Oregon

**WOODBURN PLANNING COMMISSION WORKSHOP/MEETING
MINUTES
March 8, 2012**

CONVENED: The Planning Commission met in a public workshop/meeting session at 7 p.m. in the City Hall Council Chambers, with Chair Jennings presiding.

ROLL CALL:

Chair	Jennings	Present
Vice-Chair	Bandelow	Present
Commissioner	Corning	Absent
Commissioner	Grigorieff	Present
Commissioner	Piper	Absent
Commissioner	Ellsworth	Present
Commissioner	Lima	Present

Staff Present: Jim Hendryx, Economic & Development Services Director
Jon Stuart, Assistant City Attorney
Don Dolenc, Associate Planner
Vicki Musser, Recording Secretary

Chair Jennings opened the workshop/meeting at 7 pm, and then led the Commissioners in the flag salute.

Minutes

The September 8, 2011 minutes were unanimously approved.

Business from the Audience

There was none.

Workshop – WDO, Section 3 – Landscaping General Standards

Director Jim Hendryx opened the workshop, reminding the Commissioners that a Woodburn Development Ordinance (WDO) survey was taken 2 ½ years ago. The survey showed that the public felt there were major issues dealing with clarity and ease of use with the WDO, as it was originally written. A lengthy review is being undertaken by the WDO Focus Committee, and as they have suggestions for change, they present them through staff to the Planning Commission. Since the Planning Commission’s last meeting 6 months ago, staff has been busy working with the Focus Committee on suggested revisions to Sections 2 and 3 of the WDO.

Director Jim Hendryx went over the present standards for landscaping in Section 3. The Focus Committee looked at the specific standards for landscaping, irrigation plans and types of plants for property owners in commercial and industrial areas and asked themselves if those standards met the ordinance’s intent, and whether each standard had a

specified purpose. When they looked at the standards regarding street trees, they noted that at present, a mixture of tree types are allowed in the public right of way. This could be an issue if the planter strips are too narrow, or if certain types of trees would uproot the sidewalks. The Focus Committee suggested that the tree species used should be dependent on street classification; that minor streets have only small-sized trees and major arteries be planted with large trees, keeping the trees proportional to the street size. A standard two trees per every 100 feet overall might be a better standard than the present 4 small, 3 medium or 2 large trees per 100 feet standard. They further suggested giving the Director the authority to modify the standards when physical circumstances dictate a change; for instance, if a utility pole is in the way, the Director could allow less trees to be planted than the standard requires, thus avoiding the complexity and expense of a variance application.

Present standards for landscaping in the front yards in the Commercial General (CG), Commercial Office (CO), Industrial (I) and Light Industrial (IL) zones can be complex. Based upon building placement, the number of plant units (PU's) required can be extensive, and may even encourage property owners to locate buildings immediately adjacent to the right of way. Director Hendryx noted that the Highway 99E Corridor Plan currently being considered would encourage parking on the side or in the rear of businesses. The Commission would like this topic discussed further in future.

It was noted that when extensive plantings are required, they can result in overgrowth a year or two later. With modification of the present standards, there could be a decrease in the amount of PU's in the setback area, and thus less actual density and the resulting overgrowth.

In the CO and CG zones, the standard is that all parking areas abutting a street shall provide a 42 –inch vertical visual screen from the street. This is a typical standard in many jurisdictions. The intent is to screen the parking lot from the street. The Commissioners noted that nighttime glare from cars in the parking lot can be annoying and dangerous.

The question of wall height along Hwy 214 when ODOT ultimately makes changes was raised, and Director Hendryx will attempt to get more information as to what ODOT is proposing in regards to wall height, and the reasoning behind their standard.

Parking lot tree standards were discussed, as the Focus Committee had recommended that the standards be changed to require fewer trees to be planted per number of parking spaces, in or along the perimeter of parking lots. The Commission disagreed with this recommendation, as trees are considered the most cost-effective form of landscaping in the long term.

Commissioner Bandelow asked about enforcement provisions to keep the landscaping in good shape. Director Hendryx noted that such enforcement exists when a complaint (or trigger to investigate) is made.

The Planning Commission raised the following topics for further discussion:

1. How to best deal with narrow planter strips
2. What provision should be made for trees on narrow lots
3. Ways to best deal with nighttime glare from cars in parking lots
4. Encouraging business owners to put parking lots on the side or in the rear of businesses, rather than in front of the building
5. The Focus Committee's reasoning for reducing the standards for parking lot trees
6. The wall standard for ODOT improvements on Hwy 214, and how those standards are determined

Election of Officers

The first meeting of the year calls for the election of new Commission Chair and Vice-Chair. In view of the fact that there were so few Planning Commission meetings in 2011, Commissioner Ellsworth made a motion that the present Chair (Jennings) and Vice-Chair (Bandelow) should retain their positions during 2012. Commissioner Lima seconded the motion, and it passed unanimously.

Joint Workshop (City Council/Planning Commission):

The draft 99E Highway Corridor Plan will be discussed at the upcoming special joint CC/PC workshop on Monday, March 26th. The intent of the workshop is to make the Council and Commission fully aware of all the 99E corridor vision developments before public hearings are scheduled. Chair Jennings raised concern that a one hour time limit might not be long enough to address any issues that might arise during the workshop.

Further Planning Commission Meetings:

It was decided to hold the 2 regularly scheduled Planning Commission meetings in April (4/12/12 and 4/26/12) to discuss further WDO revisions.

Planning Commission Training:

Director Hendryx requested feedback from the Commission regarding training, since there are 3 relatively new Planning Commission members. Suggestions included going over commonly used terms and acronyms, detailing what can and cannot be discussed with the public and going over basic standards and procedures. Chair Jennings felt regular twice-a-month meetings should be held. Commissioner Lima asked that everyone be reminded to turn off their cell phones.

Moment of Silence: Chair Jennings brought up the topic of prayer before meetings, and indicated that many meetings observe a moment of silence before beginning. After some discussion as to whether this would be applicable to Commission meetings, it was decided to discuss this again when all members of the Planning Commission are present.

Adjournment

Chair Jennings made a motion to adjourn the meeting. Commissioner Bandelow seconded the motion, and the meeting was adjourned at 8:45 pm.

The next Planning Commission meeting is scheduled for Thursday, March 22, 2012.

APPROVED  3-22-12
Richard Jennings, CHAIR Date

ATTEST  3/23/12
James N.P. Hendryx Date
Economic & Development Services Director
City of Woodburn, Oregon



Agenda Item

April 9, 2012

TO: Honorable Mayor and City Council through City Administrator
THRU: Scott Russell, Chief of Police
FROM: Jason R. Alexander, Captain
SUBJECT: **New Outlet- Limited On-Premise Sales and Off-Premise Sales**

RECOMMENDATION:

The Woodburn City Council recommends that the OLCC approve the **New Outlet- Limited On-Premise Sales and Off-Premise Sales** application for Sharkey's Gourmet Pizza.

BACKGROUND:

Applicant: Michael Patrick Sharkey
2681 Citadael Street
Woodburn, OR 97071
503.913.2576

Business: Sharkey's Gourmet Pizza
1537 Mount Hood Ave
Woodburn, OR 97071
503.982.8000

Owners: Same as Applicant (Above)

Agenda Item Review: City Administrator ___x___ City Attorney ___x___ Finance ___x___

License Type: **Limited On-Premise Sales** -Permits beer, wine, and cider, for on-premise consumption only and **Off-Premise Sales** – which permits beer, wine, cider sales for off-premise consumption only.

On March 13, 2012, the Woodburn Police Department received an application, requesting approval for a **New Outlet- Limited On-Premise Sales and Off-Premise Sales** for Sharkey's Gourmet Pizza located at 1537 Mount Hood Ave. Woodburn, Oregon.

The business will be open Monday thru Thursday from 11:00am to 7:00pm, Friday, and Saturday 11:00am to 8:00pm. There will be hot food service while the business is open and alcohol will be served during this time. There will not be live music, karaoke, video lottery games, or pool tables. The Police Department has received no communication from the public or surrounding businesses in support of or against the new outlet.

DISCUSSION:

The Police Department has completed a background investigation, in connection with the OLCC, on the applicant and found nothing of a questionable nature, which would preclude the issuance of this license.

FINANCIAL IMPACT:

None



April 9, 2012

TO: Honorable Mayor and City Council through City Administrator
FROM: Robyn Stowers, Community Relations Officer
SUBJECT: **Woodburn Downtown Association Agreement**

RECOMMENDATION:

It is recommended that the City Council authorize the City Administrator to enter into the attached Agreement with the Woodburn Downtown Association (WDA).

BACKGROUND:

The WDA planned and organized events and festivals in downtown Woodburn for approximately 20 years from the date of its founding in 1982. The organization's mission is, "To promote the historic and cultural diverse heritage of our community by providing opportunities that will encourage community-wide investment in downtown Woodburn. To encourage ownership of downtown through community participation in creating a beautiful, safe and economically successful City of Woodburn."

During their active years, the WDA participated in a variety of programs and events, including downtown festivals, farmers markets, flower baskets, hanging banners, Christmas lights, community cleanups, and parades. The organization invested thousands of dollars in downtown improvement projects and events annually, often with funding assistance from the City's tourism grant program. The WDA was also known for collaborating with a wide variety of community organizations, events, and activities, including the Tulip Festival, Fiesta Mexicana, Walt's Run, and the City of Woodburn.

Before the organization officially disbanded in 2007, the City had already transitioned into the role of lead organizer for many of the downtown events originally initiated by the WDA. With the help of downtown merchants, the City successfully planned the Day of the Child, Mother's Day, and Mexican Independence Day celebrations for nearly ten years. However, business participation slowly dwindled to the point that the City assumed the full responsibility of planning events.

Agenda Item Review: City Administrator ___x___ City Attorney ___x___ Finance ___x___

In 2011, the formation of the Downtown Woodburn Unidos sparked a renewed interest by downtown merchants in downtown plaza events. The Events Committee assisted the City in the planning and implementation of the May Day, Downtown Festival, and Mexican Independence Day celebrations. Greater merchant involvement resulted in better events with more diverse attendees and entertainment, fewer noise complaints, and increased community collaborations.

The experience of working with Unidos and ongoing economic pressures convinced downtown merchants of the importance of expanding their markets and attracting tourism to help sustain their businesses. With the support of Unidos, the decision was made in January 2012 to launch a new organization that focused solely on organizing events and activities in the downtown area. Within weeks, the WDA's nonprofit status was renewed and the group has been working hard to plan their 2012 Calendar of Events.

The WDA is currently reaching out to the many downtown stakeholders, encouraging them to become members of the organization. Many of the Historic Woodburn Neighborhood Association (HWNA) members were the first invited to participate in the WDA's reformation process. According to the WDA's bylaws, "Any person or business or governmental entity interested in the continued improvement and enhancement of the downtown core area of the City of Woodburn, Oregon may become member."

DISCUSSION:

The enclosed management agreement with the Woodburn Downtown Association will formalize this partnership. The major tenants of the agreement include:

- o The City will provide suitable locations for downtown events organized by WDA.
- o The City will issue a Special Event Park Use Permit for each individual event and agrees to waive all applicable fees.
- o The City will determine opening and closing times for downtown events and the time period when music is allowed.
- o The City will provide limited logistical support and oversight during the events planning phase, set-up, and operations.
- o The City will provide on-call maintenance support for City owned property and equipment for the duration of the downtown events covered by the agreement.

- o The WDA will develop an annual events budget and a calendar of events specifically identifying, but not limited to, activities needed to plan for and execute the schedule of downtown events.
- o The WDA will provide a written re-cap of the downtown events program within 60 days following the last scheduled event covered by this agreement.
- o The WDA's planning process will be open to all WDA members and include input from any interested community members.

FINANCIAL IMPACT:

The execution of this agreement will not have a direct financial impact to the City, since downtown events have been consistently operated on a break even basis. However, with the WDA assuming a greater level of planning and operational responsibility, the City expects to provide a significantly reduced level staff support to downtown events. This agreement removes the City's responsibility for contracting with event vendors, managing revenue collections, making payments for event services, and tracking event budgets.

**Agreement
between
City of Woodburn
and
Woodburn Downtown Association**

This Agreement is made and entered into by and between the City of Woodburn, an Oregon municipal corporation (hereinafter the “City”), and the Woodburn Downtown Association, an Oregon non-profit corporation (hereinafter the “WDA”).

WITNESSETH:

WHEREAS, the City acknowledges and supports the economic and cultural impacts downtown events have contributed to Woodburn and wishes to honor and preserve the multiple traditions that influence the community; and

WHEREAS, the WDA and the City originated downtown events many years ago as a means of stimulating economic activity and community pride in downtown Woodburn; and

WHEREAS, after a brief hiatus, the WDA has decided to again assume the role of lead organizer for downtown events for the benefit of Woodburn businesses and the general community; and

WHEREAS, the City recognizes the importance of the WDA ensuring that downtown events continue to grow and improve, and desires to provide its support through the terms and conditions of this agreement; and

WHEREAS, private/public cooperation between the City and the WDA is necessary to sustain downtown events;

NOW, THEREFORE, in consideration of the terms, conditions, compensation and performances contained herein, the parties hereto do mutually agree as follows:

Section 1. Term. This Agreement shall commence upon execution by the parties and shall terminate on March 31, 2013.

Section 2. Termination. This Agreement may be terminated at any time by mutual, written consent of the parties or for convenience by either party upon written notice to the other party of 30 calendar days.

Section 3. City Responsibility. The City agrees to the following:

- A. To provide suitable locations for downtown events organized by WDA.
- B. To waive any Special Event Park Use permit fees.

- C. To determine opening and closing times for downtown events and the time period when music is allowed.
- D. To issue a Special Events Permit upon receiving a complete and acceptable application from WDA.
- E. To notify the Woodburn Police Department of events for which a Special Events Permit has been issued.
- F. To provide limited logistical support and oversight during the events planning phase, set-up, and operations.
- G. To provide picnic tables, trash cans and electrical service, based on availability.
- H. To provide on-call maintenance support for City owned property and equipment for the duration of the downtown events. Refuse collection services shall be at the expense of the WDA.
- I. To assist in the promotion the downtown events, depending on the availability of resources.

Section 4. Responsibilities of WDA. The WDA agrees to the following:

- A. To sponsor and conduct low cost family-oriented downtown events consistent with the values and expectations of the community.
- B. To abide by Woodburn's Park Regulations Ordinance and Special Event Policies unless waived by the City.
- C. To make arrangements for all event set-up and clean-up.
- D. To develop an annual events budget and a calendar of events specifically identifying, but not limited to, activities needed to plan for and execute the schedule of downtown events. The events budget and calendar of events shall be referred to as the WDA's "Downtown Events Program."
- E. To submit the Annual Downtown Events Program to the City Administrator and the Community Services Director by April 1, 2012. WDA may add or delete events after the Annual Downtown Events Program is submitted to the City, but will make every reasonable attempt to do so with at least 14 days advance notice.
- F. To provide a written re-cap of downtown events program within 60 days following the last scheduled event covered by this agreement. Once the

written re-cap is received by the City, the City Administrator will contact the WDA President to schedule a City Council presentation of the re-cap.

- G. The planning process will be open to all WDA members and include input from any interested community members.
- H. To utilize private security as necessary to ensure the safety of event participants, organizers, equipment, and City property. The City Administrator and/ or Chief of Police may require the WDA to provide a specific level of private security, as they may deem necessary based upon the nature of each individual event.

Section 5. Documents and Reports. The WDA shall maintain books, records, documents and other materials that sufficiently and properly reflect all expenditures made pursuant to this Agreement. Specifically, the WDA agrees that the City shall have full access and the right to examine and copy, during normal business hours, all of the records of the WDA with respect to matters covered in this Agreement. Such rights shall last for ten (10) years from the date a disbursement is made hereunder.

Section 6. Auditing of Records. Upon thirty (30) days prior written notice, the City or its agent shall have the right to conduct an audit or review of the WDA's records reasonably related to this Agreement. If an audit or review of the records determines that funds have been inappropriately expended under this Agreement, or state law, the WDA shall take action to remedy the situation to the full amount identified in the audit as inappropriate. If the inappropriately expended funds exceed \$500, then WDA will pay the City for the cost of the audit or review.

Section 7. Insurance. The WDA shall provide and maintain at their own expense during the term of this contract, comprehensive general liability insurance with a single limit of \$1,000,000.00 per occurrence. Such insurance shall be primary to other insurance maintained by the City and shall name the City of Woodburn as additionally insured.

Section 8. Compliance with Federal, State and Local Laws. The WDA agrees to abide by all applicable federal and state statutes and regulations prohibiting employment discrimination, and any other statutes and regulations pertaining to the subject matter of this Agreement.

Section 9. Authority to Execute Agreement. The WDA represents to the City that this Agreement has been duly authorized by all necessary action on the part of the WDA and no other corporate or other action on the part of the WDA is necessary to authorize the execution and delivery of this Agreement. That this Agreement has been duly authorized by the Woodburn City Council and the City represents to the WDA that the City Administrator has the power and authority to bind the City to this Agreement.

Section 10. Legal Relations. Neither the WDA, nor any employee, officer, official or volunteer of the WDA shall be deemed to be an independent contractor, employee or volunteer

of the City. No liability shall attach to the WDA or the City by reason of entering into this Agreement except as expressly provided herein.

Section 11. Indemnification. The WDA agrees to be responsible for and assumes liability for its own negligent acts or omissions, and those of its officers, agents, officials, employees or volunteers while performing work or expending funds pursuant to this Agreement to the fullest extent provided by law, and agrees to save, indemnify, defend and hold the City harmless from any such liability. This indemnification clause shall apply to any and all causes of action arising out of performance of work or expenditures of funds under this Agreement. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to expiration or termination

Section 12. Nondiscrimination. The WDA shall comply with all applicable federal, state, and local laws, rules and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, or disability.

Section 13. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of Oregon.

Section 14. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 15. Assignment. Neither party shall assign the Agreement without written consent of the other.

Section 16. Attorney Fees. In any action brought by either party under this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorney fees in such action, or arbitration or appeal

Section 17. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all prior agreements, written and oral, between the parties. No modification of this Agreement shall be binding unless in writing and signed by both parties.

Section 18. Notification. All correspondence and notices related to this Agreement shall be directed as follows:

If directed to the City:
City of Woodburn
270 Montgomery Street
Woodburn, Oregon 97071
Attn: Jim Row, Community Services Director

If directed to the WDA:
Woodburn Downtown Association
650 N. First Street / PO Box 96
Woodburn, OR 97071

Attn: Nikki DeBuse, Vice President

IN WITNESS WHEREOF, the WDA and City have, by approval of their respective governing bodies, caused this Agreement to be executed.

City of Woodburn

By: _____
Scott C. Derickson, City Administrator

Date: _____

Woodburn Downtown Association

By: _____

Title: _____

Date: _____



Agenda Item

April 9, 2012

TO: Honorable Mayor and City Council

FROM: N. Robert Shields, City Attorney

SUBJECT: **Gas Tax Penalty of Bend Oil Co., Inc.**

RECOMMENDATION:

Authorize the City Administrator to sign a settlement agreement, in a form acceptable to the City Attorney, where Bend Oil, Inc. will agree to pay the City a gas tax penalty of \$63,136.12.

BACKGROUND:

Under the authority of Ordinance 2028 and state law, the City of Woodburn levies a motor vehicle gas tax of \$.01 per gallon. The Oregon Department of Transportation (ODOT) acts as the City's agent to collect this tax and all gas dealers within the City are required to obtain a permit and pay the tax.

In addition to payment of the tax, Ordinance 2028 imposes a penalty of an additional 200% of the tax amount owed for failure to obtain a permit. Contrary to Ordinance 2028, Oregon state law [ORS 319.090(2)] imposes a penalty of an additional 100% of the tax amount owed for failure to obtain a permit.

In October 2011, an ODOT audit revealed that, Bend Oil, Inc. operated in Woodburn since 2007 without obtaining a permit or paying the City's gas tax. Immediately after they were notified by the City of the tax owed, Bend Oil, Inc. paid the entire amount of gas tax due (\$61,799.34).

When it paid the tax, Bend Oil, Inc. also requested a waiver of the penalty provision under the ordinance. The City Attorney's office advised the City Administrator that he had no authority under the ordinance to waive the penalty.

In March 2012, Bend Oil, Inc. through its attorney offered to pay the City a penalty of 100% of the amount due, plus interest = \$63,136.12. This penalty would be in addition to the tax owed (\$61,799.34) for a total of \$124,935.46.

Agenda Item Review: City Administrator City Attorney Finance

DISCUSSION:

ORS 319.090(2) imposes a penalty of an additional 100% of the tax amount owed, while Ordinance 2028 contains a 200% penalty. Because there is no Oregon case law supporting the City's 200% penalty and the Oregon Constitution prohibits excessive fines, there are legal concerns about whether a reviewing court would uphold Woodburn's 200% local gas tax penalty. The attorney for Bend Oil, Inc. has stated in correspondence that:

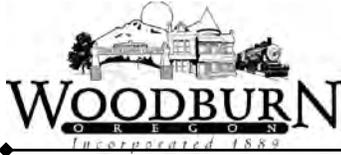
"With respect to the penalty itself, Bend Oil's position is that a penalty of 210% is clearly excessive...We believe that [the penalty] is contrary to Oregon law in that it is grossly oppressive, and disproportionate to the offense. (See, *Gooch v. Rogers*, 193 Or. 158, 184 (1951). Bend Oil will absolutely contest the validity of the penalty if a settlement of the amount cannot be reached with the City."

It is also worth mentioning that, when notified by the City, Bend Oil, Inc. immediately paid all the tax owed. There is no evidence of intent to willfully avoid the tax.

Bend Oil now wants to resolve this matter with the City without litigation. By agreeing to the 100% penalty, in accord with state law, the City Council will be finally resolving a disputed claim.

FINANCIAL IMPACT:

Settlement of this case would result in an additional \$63,136.12 to the City.



Agenda Item

April 9, 2012

TO: Honorable Mayor and City Council through City Administrator
FROM: Jim Hendryx, Director of Economic & Development Services
SUBJECT: **Planning Commission approval of Variance 2012-01 and Design Review DR 2011-03, for a proposed restaurant at 1542 Mt. Hood Avenue**

RECOMMENDATION:

No action is recommended. This item is placed before the Council for information purposes in compliance with the Woodburn Development Ordinance. The Council may call up this item for review if it desires.

BACKGROUND:

The applicant seeks to develop a 4,061 square foot restaurant on a vacant portion of a 133,530 square foot lot that is currently developed with the Mega Foods grocery store. No wetlands or floodplains exist on the site. The property is Commercial General (CG). Abutting properties are also zoned Commercial General (CG). The nearest residentially zoned property is developed with a nonresidential use (a house of worship.) The applicant requests a variance to reduce the landscaping in the yard abutting Mt. Hood Avenue. The Planning Commission conducted a public hearing on March 22, 2012.

DISCUSSION:

None.

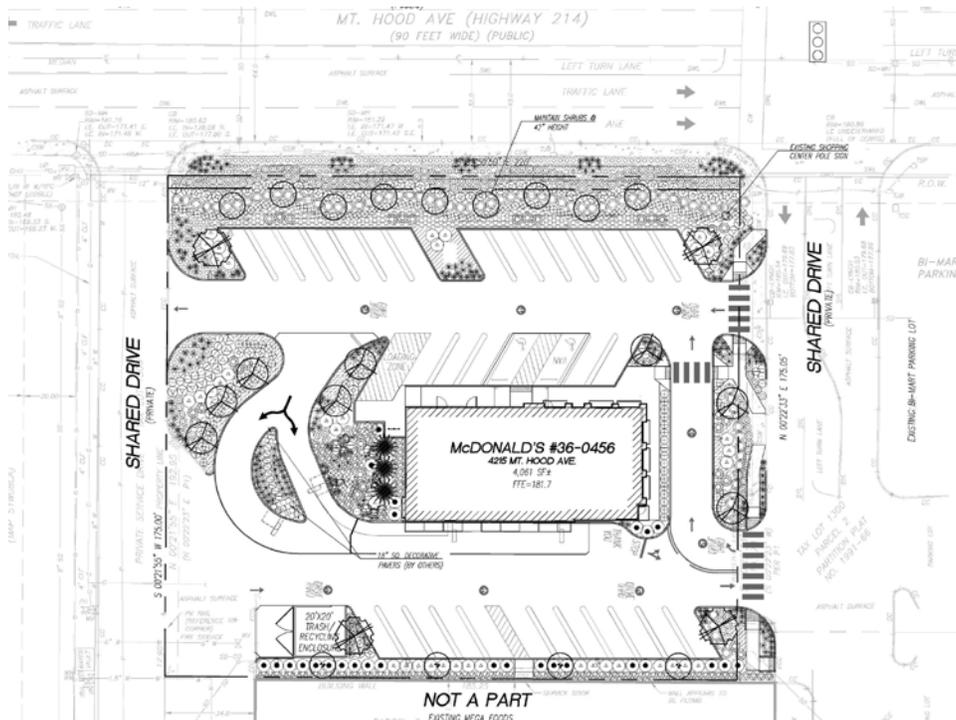
FINANCIAL IMPACT:

This decision is anticipated to have no public sector financial impact.

Agenda Item Review: City Administrator City Attorney Finance



Aerial photo with site plan



Landscaping plan