Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
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www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

04/02/2009

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Larry French, Plan Amendment Program Specialist

SUBJECT: City of Newberg Plan Amendment
DLCD File Number 011-08

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, April 15, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Barton Brierley, City of Newberg
Gloria Gardiner, DLCD Urban Planning Specialist
Steve Oulman, DLCD Regional Representative

<paa> YA/

FORM 2

DLCD Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

☐ In person ☐ electronic ☐ mailed

DEPT OF

MAR 26 2009

LAND CONSERVATION AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: **Newberg** Local file number: **DCA-06-04**

Date of Adoption: **3/16/2009** Date Mailed: **3/25/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes**Date: 11/12/2008

☐ Comprehensive Plan Text Amendment ☐ Comprehensive Plan Map Amendment

☒ Land Use Regulation Amendment ☐ Zoning Map Amendment

☐ New Land Use Regulation ☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

An amendment to the Newberg Development Code that requires a vacancy agreement, and environmental quality standards for large-scale retail development. An amendment to the Newberg Municipal Code that requires aneconomic impact analysis and mitigation of negative fiscal impacts for large-scale retail development.

Does the Adoption differ from proposal? No, no explaination is necessary

Plan Map Changed from: to:

Zone Map Changed from: to:

Location: Acres Involved:

Specify Density: Previous: New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☐	☐	☐	☐	☐	☒	☐	☐	☒	☐	☐	☐	☒	☐	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing? ☒ **Yes** ☐ **No**

If no, do the statewide planning goals apply? ☐ **Yes** ☐ **No**

If no, did Emergency Circumstances require immediate adoption? ☐ **Yes** ☐ **No**

DLCD FILE # 011-08(17236) [15454]

DLCD file No. ____________________

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **Barton Brierley** Phone: **(503) 537-1240** Extension:

Address: **P.O. Box 970** Fax Number: **503-537-1272**

City: **Newberg** Zip: **97132-** E-mail Address: **nplan@ci.newberg.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**

per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

   ATTENTION: PLAN AMENDMENT SPECIALIST
   DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
   635 CAPITOL STREET NE, SUITE 150
   SALEM, OREGON 97301-2540

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.

3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.

4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.

5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.

6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.

7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on 8-1/2x11 green paper only. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

ORDINANCE NO. 2009-2711

AN ORDINANCE AMENDING THE MUNICIPAL CODE TO REQUIRE AN ECONOMIC IMPACT ASSESSMENT REPORT AND TO AMEND THE DEVELOPMENT CODE TO REQUIRE AN ABANDONED BUILDING SURETY AGREEMENT, AND ENVIRONMENTALLY BENEFICIAL BUILDING AND DESIGN PRACTICES FOR LARGE SCALE RETAIL DEVELOPMENT SITES

RECITALS:

1. Due to the typical scale, site design, and traffic generation large-scale retail developments can have a negative effect on the local environment. Large scale development can disproportionately affect local air quality and temperature, storm water quality, energy supply, waste system, water supply, and natural resources.

2. Vacant large-scale retail development sites can be neglected and become visually unpleasing. Vacant and visually unpleasing sites can be attractive for criminal activity and have negative economic effects on surrounding businesses.

3. Large-scale retail developments can have a negative effect on local municipal finances due to their proportionally greater use of police and emergency services, transportation infrastructure, and the wastewater, storm water, and water systems.

4. Requiring mitigation measures will reduce the negative environmental and economic effects on the natural environment, municipal finances, and local economy.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. § 151.196, Additional Requirements for Development in the C-2 Zoning District, of the Newberg Development Code is amended as follows:

   (10) *Vacancy agreement.* All large scale retail development sites as defined in § 151.196 (H) shall have an abandoned building surety agreement filed with the City. The purpose of the agreement is to ensure a continued attractive business environment in case a building goes vacant. The agreement shall provide measures to maintain the on-site landscaping and exterior of the buildings to their pre-vacancy condition, and to assist in finding a future tenant. Vacancy is defined as a period exceeding one year without legal occupancy. The terms of the agreement shall include:

   a. A surety bond equal to one percent of the total valuation of the buildings on-site.

   b. If the owner fails to maintain the physical exterior of the property or any building on-site the bond may be used for items including, but not limited to: landscape maintenance, exterior building repairs, parking lot paving, amenities in the public right of way (lighting, benches, landscaping, etc.). If the cost of maintenance exceeds the amount of the bond, the City will bill the owner. Any unpaid amounts will become a lien on the property.

c. If the owner fails to legally occupy the site the bond may be used as an incentive for prospective tenants including, but not limited to: payment of permit fees, application fees, system development charges, funding for on-site landscaping, and façade improvements.

d. If the surety bond is expended in any amount, the owner shall provide a new surety bond prior to occupancy by a new tenant. The amount of the bond shall be equal to one percent of the value of the building at the time of occupancy.

e. If at any time prior to one year vacancy, the Director finds the property is in need of maintenance, the Director shall notify the owner in writing of the need to maintain the property and the intent to use the bond. Unless the owner provides the needed maintenance or objects within 30 days of the notice, the surety may be used to maintain the property. If the owner objects, the City Council will hear the matter and determine whether the surety will be used.

(11) *Environmental Impact.* All new large scale retail development as defined in § 151.196 (H) shall be LEED Certified as defined by the U.S. Green Building Council. The terms of approval are as follows:

a. The applicant shall demonstrate to the Director the extent to which the applicant has complied with the commitment to earn a LEED New Construction Certification rating for a completed project. Demonstration of LEED Certification shall be completed prior to the issuance of final Certificate of Occupancy for the new structure by submitting a report analyzing the extent credits earned toward such rating from the U.S.Green Building Council or another independent entity approved by the Director.

b. With specific regard to the LEED Stormwater Design category, all buildings shall obtain a total of at least two points in this category.

c. With specific regard to the LEED Water Efficiency category, all buildings shall obtain a total of at least one point in this category.

d. In this section the term "Leadership in Energy and Environmental Design (LEED)" means a green building rating system promulgated by the United States Green Building Council (USGBC) that provides specific principles and practices, some mandatory but the majority discretionary, that may be applied during the design, construction, and operation phases, which enable the building to be awarded points from reaching present standards of environmental efficiency so that it may achieve LEED certification from the USGBC as a "green" building, as such rating system exists on January, 1, 2009.

e. The USGBC intends to release a revised version of the LEED Green Building Rating System every three years; and the Director shall refer to the most current version of the LEED when reviewing a new building construction permit project or renovation.

f. The LEED Existing Building rating system shall be used during retrofit projects of existing structures.

2. Title 11, Business Regulations, of the Newberg Municipal Code is amended as follows:

Chapter 116. Economic Impact Assessment for Large Scale Retail

116.01 *Statement of purpose*: The city finds that large scale retail development can have adverse impacts on a local economy such as creating a net loss of employment or wages, or exporting dollars from the local area. An economic impact assessment report assists the city to identify any adverse economic impacts and subsequently require mitigation measures for a proposed large scale retail development. It is intended as a tool to ensure that new businesses, in conjunction with existing businesses, provide long term net benefits for the local economy.

116.02. *Applicability of requirements:* An economic impact assessment report shall be submitted to the Director for all proposed development that meets the following criteria:

a. New large scale retail over 30,000 square feet gross floor area or 50,000 square feet cumulative gross floor area.

b. Expansions of large scale retail requiring a Type II or Type III design review.

c. New tenants to existing large scale retail.

116.03. *Process:* An economic impact assessment report shall be conducted by an independent consultant chosen at the discretion of the Director. The report shall be paid for by the applicant. The report shall be submitted to the Director for review prior to issuance of a building permit for any large scale retail project, or prior to occupancy for any project not requiring a building permit. If the Director finds that the report meets the criteria in § 116.04 a determination of no adverse economic impact is found. If the Director finds that the criteria have not been met a public hearing will be held by the Planning Commission to review the report and make a determination based on the criteria.

116.04. *Contents of report*: The economic impact assessment report shall include the following information:

The anticipated fiscal impact on municipal services, including police, fire, road maintenance, and stormwater, waste water, and water services.

116.05. *No adverse impact criteria:* In order to have a finding of no significant adverse impact, the report must show the following criteria are met:

The proposed development will not have an adverse fiscal impact on municipal services, including police, fire, road maintenance, and stormwater, sewer, and water services.

116.06. *Mitigation.* If the report finds any of the criteria in section 116.04 are not met, the Planning Commission can require mitigation. Conditions may include, but are not limited to:

a. Requiring additional payment for municipal services.

b. Installing or upgrading utility services, such as stormwater detention facilities.

c. Providing additional transportation facilities, such as sidewalks, traffic signals, bus stops, turn lanes, and street widening.

3. The findings in Exhibit "A" are hereby adopted.

➢ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: April 15, 2009.

ADOPTED by the City Council of the City of Newberg, Oregon, this 16th day of March, 2009, by the following votes: **AYE: 7** **NAY: 0** **ABSENT: 0** **ABSTAIN: 0**

Norma I. Alley

Norma I. Alley, City Recorder

ATTEST by the Mayor this 19th day of March, 2009.

Bob Andrews

Bob Andrews, Mayor

Exhibits:
"A" Findings

LEGISLATIVE HISTORY

By and through the following:

- January 8, 2009 Planning Commission Public Hearing
- September 25, 2008 Planning Commission Workshop
- September 11, 2008 Planning Commission Workshop
- June 2, 2008 City Council Public Hearing
- April 21, 2008 City Council Workshop
- January 22, 2008 City Council Workshop
- November 8, 2007 Planning Commission Public Hearing
- October 11, 2007 Planning Commission Workshop
- April 12, 2007 Planning Commission Workshop

Exhibit A Findings
Ordinance 2009-2711

Comprehensive Plan Policy J.1.3. ***Developments should respect the natural ground cover of their sites to the extent possible and plans should be made to preserve existing mature, non-hazardous trees in healthy condition.***

Comprehensive Plan Policy M.1.a. ***The City will encourage energy-efficient development patterns. Such patterns shall include the mixture of compatible land uses and a compactness of urban development.***

Comprehensive Plan Policy E.1. ***Development shall not exceed the carrying capacity of the air, water or land resource base.***

Comprehensive Plan Policy E.2. ***Water quality in the Willamette River and tributary streams shall be protected.***

Comprehensive Plan Policy E.4. ***The Newberg airshed shall be protected from excessive pollution levels resulting from urbanization.***

Comprehensive Plan Policy E.11. ***The City will continue to encourage and support the three R's of recycling (re-use, reduction and recycling).***

Comprehensive Plan Policy H.1.d. ***The City shall encourage the development of industries which represent the most efficient use of existing resources including land, air, water, energy and labor.***

Finding: The above policies are intended to ensure a high level of local environmental quality. The proposed amendments help to ensure that the built environment has a limited degree of impact on the natural environment.

Comprehensive Plan Policy F.9. ***The City will seek abatement of the aesthetic degradation of the environment resulting from blighted neighborhoods, indiscriminate waste disposal, offensive outdoor storage.***

Comprehensive Plan Section J. Urban Design, Goal 1: ***To maintain and improve the natural beauty and visual character of the City.***

Comprehensive Plan Policy J.1.c. ***Non-residential uses abutting residential areas should be subject to special development standards in terms of setbacks, landscaping, sign regulations, building heights and designs.***

Comprehensive Plan Policy J.1.g. ***Community appearance should continue to be a major concern and subject of a major effort in the area. Street tree planting, landscaping, sign regulations and building improvements contribute to community appearance and should continue to be a major design concern and improvement effort.***

Comprehensive Plan Policy J.3.a. ***Where commercial development is permitted, such***

development should be subject to design requirements for ingress and egress, landscaping and sign control.

Comprehensive Plan Policy J.4.a. ***The City will require buffering and landscaping to minimize impacts between housing and potentially conflicting uses.***

Comprehensive Plan Policy K.8.a. ***Adopt transportation and land use design standards that emphasize visual and aesthetic quality.***

Finding: The above policies stress maintaining the aesthetics of the community. The proposed amendments achieve these goals by requiring that vacant buildings and landscaping on development sites are maintained to pre-vacancy conditions.

NEWBERG DEVELOPMENT CODE § 151.205 DESCRIPTION AND PURPOSE.

(A) ***It is recognized that certain types of uses require special consideration prior to their being permitted in a particular district. The reasons for requiring such special consideration involves, among other things, the size of the area required for the full development of such uses, the nature of the traffic problems incidental to operation of the use, the effect such uses have on any adjoining land uses and on the growth and development of the community as a whole.***

(B) ***All uses permitted conditionally are declared to be possessing such unique and special characteristics as to make impractical their being included as out-right uses in any of the various districts herein defined. The authority for the location and operation thereof shall be subject to review and the issuance of a conditional use permit. The purpose of review shall be to determine that the characteristics of any such use shall be reasonably compatible with the type of uses permitted in surrounding areas, and for the further purpose of stipulating such conditions as may be reasonable so that the basic purposes of this code shall be served. Nothing construed herein shall be deemed to require the hearing body to grant a conditional use permit.***

Finding: Very large retail buildings possess a number of unique characteristics that warrant special review. The buildings are much larger, posing much greater aesthetic and economic presences in the community. They generate large volumes of traffic, noise, lighting, debris, and so forth in a concentrated area. Each development is unique and can have varied impacts on the community. Because of this, it is appropriate to require conditional use permits prior to construction of any such uses. Under conditional use review, additional conditions may be added to address specific issues.

Findings: The vacancy agreement will ensure that the on-site landscaping and exterior of the building will be maintained and not become an eyesore to the community. The agreement will also provide funds to assist prospective tenants to occupy the site, and subsequently bring the site in conformance with Development Code requirements.

Findings: The City currently does not have Municipal Code requirements regarding the economic impact of a prospective business. This text amendment will ensure that the local municipal budget is not burdened by new large scale retail development.

Attachment 1

Planning and Building Department

P.O. Box 970 · 414 E. First Street · Newberg, Oregon 97132
(503) 537-1240 · (503) 537-1272 FAX · www.ci.newberg.or.us

TYPE IV LEGISLATIVE AMENDMENT STAFF REPORT
DCA-06-04

FILE NUMBER:	DCA-06-04
REQUEST:	1) Amend the Newberg Development Code to require a vacancy agreement, and environmentally beneficial site and building standards for large scale retail development. 2) Amend the Newberg Municipal Code to require new large scale retail development to submit an economic impact assessment report for review and mitigate negative economic impacts in regard to municipal finances.
APPLICABLE CRITERIA:	Newberg Development Code §§151.025, 151.075, and 151.122
APPLICANT:	City of Newberg
PREPARED BY:	City of Newberg Planning Staff
DATE OF HEARING:	March 16, 2009

A. ISSUE SUMMARY:
In 2008 the Newberg City Council adopted Ordinance 2008-2696, amending the Newberg Development Code to provide site and building design standards for large scale retail development. Large scale retail is defined by the Newberg Development Code as those buildings with floor area exceeding 30,000 square feet, or development sites with buildings that cumulatively exceed 50,000 square feet. The standards primarily focused on creating a more pedestrian oriented and aesthetically appealing development site. Through the adoption process several other areas of concern arose:

1. Environmental Impacts: Due to the typical scale, site design, and traffic generation large-scale retail developments can have a negative effect on the local environment. Large scale development can disproportionately affect local air quality and temperature, storm water quality, energy supply, waste system, water supply, and natural resources.
2. Vacancy: Vacant large-scale retail development sites can be neglected and become visually unpleasing. Vacant and visually unpleasing sites can be attractive for criminal activity and have negative economic effects on surrounding businesses.
3. Economic Impacts: Large-scale retail developments can have a negative effect on local

municipal finances due to their proportionally greater use of police and emergency services, transportation infrastructure, and the wastewater, storm water, and water systems.

The City Council requested that the Planning Commission review these issues and identify potential mitigation strategies. In September 2008 two workshops were held with the Planning Commission to discuss these issues and to identify possible solutions. The Planning Commission reviewed potential code language and was in general agreement with the proposal. For large scale retail development the proposed amendments would require:

1. Environmentally beneficial site design and construction practices.
2. Submittal of a surety bond with the city. Upon vacancy, the bond could be used for landscaping, parking lot, and building maintenance and incentives for prospective tenants.
3. Identification of adverse impacts to municipal finances and mitigation of impacts.

B. DISCUSSION:

1. Existing Policies
    a. *Environmental Policies*. Although the City of Newberg does not explicitly have one document regarding environmental regulation, elements of existing policies and plans do provide a start. The City of Newberg has adopted the International and Oregon Building Codes. These codes are used by the Building Division to review all development proposals. As of 2008, the Codes require the use of energy efficient materials and building practices. The Public Works Department is developing an infrastructure plan for wastewater re-use. When the program is operational the Chehalem Glenn Golf Course will be the first customer. Existing and new industrial and institutional development will be encouraged to use the re-use system as well. The Newberg Comprehensive Plan includes eleven policies pertaining to developments' impact on air, water, and land quality. The Development Code (the tool to implement the policies of the Comprehensive Plan) includes standards regarding landscaping, impervious surface, street trees, minimum density, and stream protection. Cumulatively these policies do have a positive effect on the environment. The degree of the effect is unknown. Are these existing City policies and plans:

        i. Reducing developments impact on natural systems?
        ii. Helping to achieving the goals of the Newberg Comprehensive Plan?

    b. *Vacancy Policies*
    The City of Newberg currently does not have vacancy policies in regard to large scale retail development.

    c. *Economic Impact Policies*
    The City of Newberg currently requires system development fees for all new commercial development. These are sometimes referred to as "impact fees". The City currently charges these fees based on a particular development's "impact" to the local road system, public safety services, storm water system, waste water system, and

water system. Nationwide, large scale retailers have been found to use an exponentially greater share of these services, resulting in long-term negative effects to municipal finances. The proposed policies, as recommended by the Planning Commission, attempt to mitigate significant adverse impacts to the municipal budget.

2. <u>Environmentally beneficial site and building practices</u>
   a. *Why consider including environmental standards in the Development Code?*
   All development effects, to some degree, air quality and temperature, storm water quality, energy supply, construction waste, indoor air quality, the waste water system, water supply, and existing natural resources. The effects of large scale retailers on these systems have been found to be exponentially greater than other commercial development sites. Requiring environmentally beneficial site and building practices for large scale retailers:

      i. Will implement the Air, Water, and Land Resource Quality policies of the Newberg Comprehensive Plan.
      ii. May improve storm water quality and reduce the quantity of storm water runoff. These policies help to fulfill the implementation measures identified in Newberg's TMDL plan (Total Maximum Daily Load).
      iii. May reduce the impact on the municipal water and waste water system.
      iv. May improve energy efficiency and subsequently reduce long term energy and operating costs.
      v. May increase commercial investment in Newberg. Development sites that incorporate environmentally beneficial design practices have been shown to have greater resale value and are attractive assets to potential investors of neighboring properties.

   b. *LEED*
   In recent years there has been an increased interest in the importance of reducing the negative effects of development on the natural environment. In an effort to reduce these negative effects, The US Green Building Council has developed a third party voluntary certification system titled LEED (Leadership in Energy and Environmental Design). LEED certification is based a weighted point point system that address a projects environmental impact in regard to design, construction, building operations, and management.The criteria are developed by several volunteer technical advisory committees composed of professionals in the building and construction industry. LEED certification is not the only program for "Green Development", however it is currently the most well known and most widely used. A brief web survey showed that many municipalities currently require LEED certification for new public public projects and large private commercial and institutional development.

   LEED for New Construction
   The LEED program currently has several rating systems for various types of projects including healthcare, schools, structural exterior, new construction, and neighborhoods. The LEED New Construction Certification program is primarily for

new institutional and commercial projects; therefore, it is most appropriate for the proposed amendments to require this type of certification for new large scale retail development. For the New Construction Certification there are six categories to obtain certification points. The categories include Sustainable Sites, Water Efficiency, Energy & Atmosphere, Materials & Resources, Indoor Environmental Quality, and Innovation & Design Process. Each category has several sub-categories. For example points can be obtain for reducing light pollution, using innovative storm water system design, using green power, using water efficient landscaping, using recycled building materials, and reducing construction waste. For each sub-category the USBC has created specific criteria regarding how to achieve points in each category. The LEED program checklist can be viewed below:

Project Checklist

Sustainable Sites		**14 Possible Points**
Prereq 1	Construction Activity Pollution Prevention	Required
Credit 1	Site Selection	1
Credit 2	Development Density & Community Connectivity	1
Credit 3	Brownfield Redevelopment	1
Credit 4.1	Alternative Transportation, Public Transportation Access	1
Credit 4.2	Alternative Transportation, Bicycle Storage & Changing Rooms	1
Credit 4.3	Alternative Transportation, Low Emitting & Fuel Efficient Vehicles	1
Credit 4.4	Alternative Transportation, Parking Capacity	1
Credit 5.1	Site Development, Protect or Restore Habitat	1
Credit 5.2	Site Development, Maximize Open Space	1
Credit 6.1	Stormwater Design, Quantity Control	1
Credit 6.2	Stormwater Design, Quality Control	1
Credit 7.1	Heat Island Effect, Non-Roof	1
Credit 7.2	Heat Island Effect, Roof	1
Credit 8	Light Pollution Reduction	1
Water Efficiency		**5 Possible Points**
Credit 1.1	Water Efficient Landscaping, Reduce by 50%	1
Credit 1.2	Water Efficient Landscaping, No Potable Use or No Irrigation	1
Credit 2	Innovative Wastewater Technologies	1
Credit 3.1	Water Use Reduction, 20% Reduction	1
Credit 3.2	Water Use Reduction, 30% Reduction	1
Energy & Atmosphere		**17 Possible Points**
Prereq 1	Fundamental Commissioning of the Building Energy Systems	Required
Prereq 2	Minimum Energy Performance	Required
Prereq 3	Fundamental Refrigerant Management	Required
Credit 1	Optimize Energy Performance	1–10
Credit 2	On-Site Renewable Energy	1–3
Credit 3	Enhanced Commissioning	1
Credit 4	Enhanced Refrigerant Management	1
Credit 5	Measurement & Verification	1
Credit 6	Green Power	1
Materials & Resources		**13 Possible Points**
Prereq 1	Storage & Collection of Recyclables	Required
Credit 1.1	Building Reuse, Maintain 75% of Existing Walls, Floors & Roof	1
Credit 1.2	Building Reuse, Maintain 95% of Existing Walls, Floors & Roof	1
Credit 1.3	Building Reuse, Maintain 50% of Interior Non-Structural Elements	1
Credit 2.1	Construction Waste Management, Divert 50% from Disposal	1
Credit 2.2	Construction Waste Management, Divert 75% from Disposal	1
Credit 3.1	Materials Reuse, 5%	1
Credit 3.2	Materials Reuse, 10%	1
Credit 4.1	Recycled Content, 10% (post-consumer + 1/2 pre-consumer)	1
Credit 4.2	Recycled Content, 20% (post-consumer + 1/2 pre-consumer)	1
Credit 5.1	Regional Materials, 10% Extracted, Processed & Manufactured Regionally	1
Credit 5.2	Regional Materials, 20% Extracted, Processed & Manufactured Regionally	1
Credit 6	Rapidly Renewable Materials	1
Credit 7	Certified Wood	1
Indoor Environmental Quality		**15 Possible Points**
Prereq 1	Minimum IAQ Performance	Required
Prereq 2	Environmental Tobacco Smoke (ETS) Control	Required
Credit 1	Outdoor Air Delivery Monitoring	1
Credit 2	Increased Ventilation	1
Credit 3.1	Construction IAQ Management Plan, During Construction	1
Credit 3.2	Construction IAQ Management Plan, Before Occupancy	1
Credit 4.1	Low-Emitting Materials, Adhesives & Sealants	1
Credit 4.2	Low-Emitting Materials, Paints & Coatings	1
Credit 4.3	Low-Emitting Materials, Carpet Systems	1
Credit 4.4	Low-Emitting Materials, Composite Wood & Agrifiber Products	1
Credit 5	Indoor Chemical & Pollutant Source Control	1
Credit 6.1	Controllability of Systems, Lighting	1
Credit 6.2	Controllability of Systems, Thermal Comfort	1
Credit 7.1	Thermal Comfort, Design	1
Credit 7.2	Thermal Comfort, Verification	1
Credit 8.1	Daylight & Views, Daylight 75% of Spaces	1
Credit 8.2	Daylight & Views, Views for 90% of Spaces	1
Innovation & Design Process		**5 Possible Points**
Credit 1.1	Innovation in Design	1
Credit 1.2	Innovation in Design	1
Credit 1.3	Innovation in Design	1
Credit 1.4	Innovation in Design	1
Credit 2	LEED Accredited Professional	1
Project Totals		**69 Possible Points**

Certified 26–32 points • Silver 33–38 points • Gold 39–51 points • Platinum 52–69 points

LEED for New Construction Rating System v2.2

A new project can achieve 4 possible levels of LEED certification. The Planning Commission recommends that new large scale retail project achieve, at a minimum, a "*Certified*" rating.

- Certified rating: 26-32 points
- Silver rating: 33-38 points
- Gold rating: 39-51 points
- Platinum rating: 52-69 points

The local storm water system
One municipal service in particular that may be significantly affected by large scale retail development is the storm water system. Subsequently the Planning Commission recommends that the requirements emphasize LEED points in this area. As the area of impervious surface of a site increases the *quantity* and rate of flow of storm water increases. As the number of parking stalls increases, therefore increasing the number of vehicles that can be located on-site, the *quality* of storm water is decreased. Storm water quality is primarily affected by the chemicals contained in gasoline, oil, antifreeze, brake linings, and rubber. The goals of any storm water standards should be to both *decrease the rate of flow* into the storm water system and *increase the quality* as it enters the storm water system. LEED includes several site development options that may improve storm water quality and quantity of run off into the City's storm water system.

In the LEED certification program there are a total of two possible points for storm water design. The proposed text amendments require that a new project achieve a total of two points in the storm water design categories – the maximum possible. In general each criterion seems to permit flexibility by providing several alternatives. An excerpt from the LEED Certification criteria can be viewed below.

SS Credit 6.1: Stormwater Design: Quantity Control
1 Point

Intent

Limit disruption of natural water hydrology by reducing impervious cover, increasing on-site infiltration, reducing or eliminating pollution from stormwater runoff, and eliminating contaminants.

Requirements

CASE 1 — EXISTING IMPERVIOUSNESS IS LESS THAN OR EQUAL TO 50%

Implement a stormwater management plan that prevents the post-development peak discharge rate and quantity from exceeding the pre-development peak discharge rate and quantity for the one- and two-year 24-hour design storms.

OR

Implement a stormwater management plan that protects receiving stream channels from excessive erosion by implementing a stream channel protection strategy and quantity control strategies.

OR

CASE 2 — EXISTING IMPERVIOUSNESS IS GREATER THAN 50%

Implement a stormwater management plan that results in a 25% decrease in the volume of stormwater runoff from the two-year 24-hour design storm.

Potential Technologies & Strategies

Design the project site to maintain natural stormwater flows by promoting infiltration. Specify vegetated roofs, pervious paving, and other measures to minimize impervious surfaces. Reuse stormwater volumes generated for non-potable uses such as landscape irrigation, toilet and urinal flushing and custodial uses.

c. *LEED certification review process*
A development site can achieve LEED in two stages site design review and final construction. The combined design review fee and construction review fee is about $0.035/square foot of floor area. The following table summarizes the process for LEED certification:

LEED Certification Process	
Review Phase	Review Period
Preliminary review: The project team submits all attempted credits and prerequisites. USGBC returns them to the project team as "earned," "pending," or "denied."	25 business days
Preliminary review response: Project team responds to any credits or prerequisites marked as "pending" and resubmits to USGBC.	Up to 25 business days
Final review: USGBC reviews the resubmitted credits and returns a final review of all credits and prerequisites, which will either be marked "earned" or "denied."	15 business days
Accept or Appeal: The project team must choose to accept or appeal the results of the final review.	Up to 25 business days
Appeal: At the project team's discretion, denied credits or prerequisites may be resubmitted to USGBC for appeal. USGBC will return the appealed prerequisite(s) or credit(s) to the project team as "earned" or "denied."	25 business days

Source: U.S. Green Building Council

3. <u>Vacancy & Maintenance Agreements</u>

a. *Why are large scale retail buildings vacant?*
There are several reasons why large scale vacancies occur:

i. Having an excess amount of retail land in a community.
ii. Retailers vacating an existing store to build a larger store in the same community.
iii. Economic downturn.

In Newberg most of the large scale retail development has occurred after 1990. The City has not witnessed the vacancy of a large scale retail site. However there have been some smaller retail sites (below 30,000 square feet of building area) that have had short term vacancies.

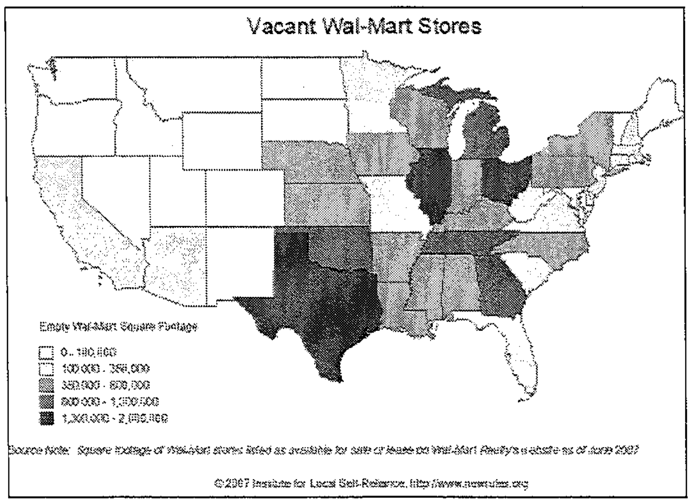
b. *What are the impacts of a vacant larger scale retail development?*
Large scale buildings, often intended for a single purpose, when vacant can have a negative impact on the surrounding neighborhood and the community as a whole.

i. The potential exists for vacant sites and buildings to lack required maintenance and become aesthetically unpleasant.
ii. Derelict sites may cause disinvestment in the neighboring area.
iii. Vacant large scale retail buildings are considered difficult to adapt for different uses and to find future tenants.

c. *What options are available to reduce the impacts of vacant buildings?*
One way to ensure that the site is not vacant for long periods of time and used to its highest potential is to require a vacant building surety agreement at the beginning of the project. The agreements typically include a bond to be issued which would be used towards demolition, financial assistance for a future tenant, or redeveloping the property. The agreements may also include a strategy for adapting the site to be used by a future tenant if the building becomes vacated. The Planning Commission recommends that the bond be used for site maintenance and future tenant incentives (permit fees, application fees, system development charges, on-site landscaping, and façade improvements).

d. *Anecdotal evidence: Vacancy in Oregon*
Staff requested information from planners that participate in the Oregon Planners Network (an online email listserv network) regarding their experiences with vacant large scale retailers. Information, resources, and suggestions were obtained from several cities around Oregon. Most staff persons did not indicate that vacant large scale retail buildings are an existing problem or that vacant building reuse agreements are used.

To augment the information received by other planning staff, by using Wal-Mart vacancies as a proxy for all large scale retailers we can make some general assumptions regarding the degree to which large scale vacancies are occurring in Oregon. The following map of the United States can be used to compare Oregon's amount of vacant Wal-Mart retail space to other states in 2007. The map shows that Oregon is one of several states that have a relative low amount of vacant Wal-Mart retail building space. However, this is likely due to a lower number of stores in Oregon. According to Wal-Mart's realty division (www.wal-martrealty.com) as of February 2009 Wal-Mart has 16 super centers and 14 discount stores in Oregon. No Wal-Mart stores are currently available for lease or sale. The total number of vacant Wal-Mart stores is unknown. In 2007 the City of Redmond experienced the vacancy of a Wal-Mart due to the construction of a new Super Wal-Mart on the opposite end of the city. The building is currently vacant. Wal-Mart's plan for the building is unknown at this time.



Staff from the City of Medford stated that vacant large scale retail buildings have not been an issue in the past however the Medford City Council recently adopted the following vacancy requirements:

> ***Maintenance of Vacant Buildings***
> *"In the event of the vacancy of non-residential buildings, the owner shall maintain facilities and grounds, including structures, landscaping, parking lots and storm water facilities, to ensure the development does not become a public nuisance."*

In Medford this regulation applies to all non-residential buildings, not specifically large scale retail.

4. Economic Impacts
   a. *What are the potential impacts of a large scale retailer on the local budget?*
   Studies have shown that large scale retail, unlike industrial or residential development, may produce a net tax loss to a local municipal budget. This means that the public services that are being provided (police, fire, road maintenance, waster water system) exceed the tax revenue generated by the development. In the long term this may cause a strain on the local budget causing some communities to raise property taxes to accommodate this net loss in tax revenue.

   b. *Why consider requiring an economic impact report?*
   Large scale retail development occurs infrequently. The degree of positive or negative economic impact that a large scale retailer would have in Newberg is unknown. The amount of tax income generated compared to the services varies depending on the size and type of retail development and the existing municipal budget. Requiring an economic impact report provides an opportunity to identify the effects of large scale retail development considered in context of the current local budget.

   Curtailing the negative impacts of all development is one of the primary purposes of the Development Code. An example of an existing mitigation tool is the use of traffic studies. Currently developments that are found to generate traffic volumes above a certain amount are required to submit a traffic study to the Director for review. The purpose of the traffic study is to identify the impacts to the local transportation system. If negative impacts are found, mitigation of the impacts may be required (i.e., installation of a traffic light). As with traffic studies, the economic impact report would be utilized to provide third-party objective evidence of the effects of large scale retailers.

   Although some communities require an economic report to identify impacts to local wages and local businesses, the Planning Commission and staff recommend that the report focus primarily on fiscal impacts to the municipal budget. Requiring mitigation of the negative impacts to public services has been shown to be a legally justifiable action of a municipality. However, requiring mitigation for impacts that are not clearly in the public realm are more difficult to justify with local government action.

c. *What are the potential implications of requiring an economic impact report?*
   i. An economic impact report would be an added expense for a developer.
   ii. Reviewing the report would utilize staff time.
   iii. If the Director identifies significant negative impacts, a hearing before the Planning Commission would be required. This would require staff time and added time and application costs for the applicant.
   iv. If the Planning Commission finds an adverse impact to local municipal services the following mitigation measures could be required:
      - Additional payment for municipal services.
      - Installing or upgrading utility services, such as stormwater detention facilities.
      - Providing additional transportation facilities, such as sidewalks, traffic signals, bus stops, turn lanes, and street widening.
   v. Requiring mitigation of adverse economic impacts to municipal services will decrease a development's fiscal burden to the municipal budget.

C. PROCESS

1. Amending the Newberg Development Code and Newberg Municipal Code is a Type IV legislative action.

2. Type IV legislative actions require that the Planning Commission hold a public hearing and make a recommendation to City Council. The Planning Commission recommended approval. The City Council will hold a public hearing and make a final decision.

D. NOTICE

1. Notice of the proposed amendments was sent to the Department of Land Conservation and Development at least 45 days prior to the public hearing.

2. Notice was published in the *Newberg Graphic* at least 20 days prior to the public hearing.

E. STAFF RECOMMENDATION

The staff recommendation is made in the absence of public testimony and may be modified prior to the close of the hearing. At this time, staff recommends:

Adopt Ordinance 2009-2711. Amending the Newberg Development Code to require a vacancy agreement, and environmentally beneficial site and building standards for large scale retail development and to amend the Newberg Municipal Code to require new large scale retail development to submit an economic impact assessment report for review and mitigate negative economic impacts in regard to municipal finances.

Luke Pelz

From: Sid Friedman [sid@friends.org]

Sent: Wednesday, January 28, 2009 2:39 PM

To: Luke Pelz

Subject: [Fwd: gray fields - empty big boxes, over-malling of America]

Luke,

FYI - It has kudos to Oregon at the end. Some good stats in here about wasted land and resources through allowing sprawling retail.

http://www.ilsr.org/columns/2009/011509-2.html

--

Sid Friedman - Willamette Valley Advocate.1000 Friends of Oregon - 189 Liberty St NE, #307

Big, empty boxes

StarTribune.com
Minneapolis · St. Paul, Minnesota

By Stacy Mitchell, originally published in the **Minneapolis Star Tribune**, January 15, 2009

Abandoned big-box stores, dead and dying strip malls and empty storefronts are about to join foreclosed houses as one of the defining features of the American landscape in 2009.

Within a few months, more than one-eighth of the country's retail space will be sitting vacant, according to some estimates. That's about 1.4 billion square feet, or 50 square miles, of empty store space, ringed by roughly 150 square miles of useless parking lot.

It will be tempting to blame the weak economy for all of this wreckage. But the recession has merely been the trigger. This avalanche of vacant retail, much like the mortgage crisis, has been a long time in the making.

Since the early 1990s, the pace of retail development has far outstripped growth in spending. Between 1990 and 2005, the amount of store space in the United States doubled, ballooning from 19 to 38 square feet per person. Meanwhile, real consumer spending rose just 14 percent.

With big chains, like Wal-Mart, Target and Home Depot, leading the way, retail development became, to a large extent, a predatory enterprise. Waves of ever-bigger big-box stores and new shopping centers have succeeded, not by satisfying growing demand, but by cannibalizing sales, first from downtowns and older malls, and then from other recently built shopping centers and big-box stores.

City officials have been largely complicit in this merry-go-round. Many have clung to the idea that building new stores creates jobs and tax revenue, when all most of these projects do is siphon economic activity from other parts of town. By zoning plenty of open land for retail, cities have given developers little incentive to redevelop older shopping centers. Why bother when fresh ground waits a mile up the road?

Long before the financial crisis hit, PricewaterhouseCoopers had deemed the United States vastly "overstored." In a 2003 report, the investment research firm declared that the "most overretailed country in the world hardly needs more shopping outlets of any kind." But few cities heeded that warning. Indeed, even as the economy began to slow in 2007, retail development continued at a furious pace, with more than 140 million square feet of new shopping centers and big-box stores opening.

We now face a painful reckoning. Already, many communities are saddled with dying malls and derelict big-box stores. In Minnesota, abandoned Wal-Mart stores have been sitting idle in Albert Lea and Owatonna for years, while Brookdale, the mall in Brooklyn Center, is fast approaching 50 percent vacancy.

The situation is likely to get much worse in the coming months as major chains and smaller retailers close tens of thousands of outlets nationwide.

Vacant stores are not only eyesores. These blighted properties can drag down home prices in surrounding neighborhoods, undermine otherwise healthy businesses nearby and deter new investment.

Sometimes cities manage, often with a great deal of effort, to find a new use for one of these sites, but most abandoned big-box stores and strip malls remain that way for years. These buildings are not particularly suited to activities other than retailing, and there are far more of them than potential uses.

The only way to ensure that the coming wave of deserted stores and shopping centers does not become a persistent blight on the landscape and a drag on local economies for decades to come is for cities, working together across metro regions, to sharply limit what can be built on undeveloped land.

If colonizing fresh land were no longer an option, developers would be far more likely, once the recession ends, to recycle idle malls and vacated big-box stores. These constraints would also encourage more efficient use of land. Single-story box stores with surface parking would give way to multistory buildings that mix housing with retail.

Indeed, this is precisely what is happening in Oregon, where urban growth boundaries limit sprawl and protect the countryside from development.

In the Portland metro, developers are eyeing aging strip malls built in the 1960s and '70s as sites for new multistory buildings that would combine housing on the upper floors with retail below. According to one estimate, as much as 70 to 80 percent of the metro region's growth could be accommodated by redeveloping empty or underused properties.

It's too late to prevent the rash of retail vacancies that will emerge in the coming months, but, by putting an end to years of massive overbuilding and sprawl, we can ensure that these sites are first in line for redevelopment.

Stacy Mitchell is senior researcher with the New Rules Project (newrules.org) at the Institute for Local Self-Reliance of Minneapolis and Washington, D.C. She is the author of "Big-Box Swindle: The True Cost of Mega-Retailers and the Fight for America's Independent Businesses."

About ILSR: The Institute for Local Self-Reliance is a nonprofit organization founded in 1974 to advance sustainable, equitable, and community-centered economic development through research and educational activities and technical assistance. More at **http://www.ilsr.org**

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January 8, 2009

RECEIVED
JAN 0 8 2009

Newberg Planning Commission
Newberg Planning Staff
414 E. First Street
Newberg OR 97132

Re: DCA-06-04, Large-Scale Retail Standards and Assessments

Dear Commissioners and Staff:

1000 Friends of Oregon and Friends of Yamhill County appreciate your recognition of the significant impacts large-scale (big-box) commercial development can have on communities such as Newberg. We applaud and support your efforts to address these impacts through the proposed amendments to the Newberg Development Code.

Unfortunate experience in too many communities throughout Oregon and the nation demonstrates that inappropriate big-box retail development can:

- Seriously and negatively impact existing retail businesses. According to the Oregon Downtown Development Association, "A much higher percentage of a dollar spent at a locally owned business recycles within the community as compared to chains and large discounters. Studies show that for every dollar spent at a locally owned business, $.60 of that dollar is retained within the community. This compares to only $.20 on the dollar retained with chain stores and $.06 on the dollar retained by large superstore discounters."

  A recent study in Maine reached a similar conclusion: local businesses recycle about 45 percent of their revenue back into the local economy and spend another nine percent elsewhere in the state.. In contrast, only 14 percent of the revenue taken in by a typical big box store is re-spent within the state.[1]

- Place downward pressure on local retail wages, exacerbating existing problems of housing affordability. According to many economists, the rapid expansion of big box

[1] The Economic Impact of Locally Owned Businesses vs. Chains: A Case Study in Midcoast Maine," Institute for Local Self- Reliance and Friends of Midcoast Maine, September 2003. A similar study in Austin, Texas, produced comparable results: Civic Economics, "Economic Impact Analysis, A Case Study: Local Merchants vs. Chains," December 2002.

chains during the 1990s was the main reason why growth in retail wages over the decade lagged average wage growth by more than 20 percent.[2]

- Seriously impact traffic patterns and greenhouse gas emissions by promoting auto-intensive development surrounded by large blocks of asphalt parking at a time when Newberg and other communities are mandated to *reduce* auto-reliance and the State of Oregon has set specific greenhouse gas reduction targets.

- Seriously blight shopping areas when large-scale retail boxes lose their tenants or go out of business. Between 1990 and 2005, the amount of retail space per capita in the U.S. doubled, while income grew by only 28 percent. The predictable result has been a dramatic increase in the number of derelict shopping outlets.[3] "The only sure thing is that owners will be challenged to re-lease empty boxes abandoned by the losers."[4]

How will the Newberg community grow, work, shop, and live in future years. The proposed "green" building and environmental standards, vacancy agreements, and economic impact assessments that are currently under consideration will continue to welcome large-scale retailers to Newberg, while preventing their most negative impacts.

- Will Newberg continue to have a vital downtown and other healthy commercial areas?
- Will land-use decisions undermine locally-owned retailers in favor of national and international big-box chains?
- Will the recent patterns of bland, auto-oriented strip commercial sprawl be encouraged around the fringe of the city?

We urge adoption of the proposed amendments. Please enter these comments into the official record of this proceeding and provide us with notice of your decision in this matter.

Sincerely,

/s/ Ilsa Perse

Ilsa Perse
Friends of Yamhill County

/s/ Sid Friedman

Sid Friedman
1000 Friends of Oregon

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[2] http://www.newrules.org/retail/mainelocaleconomy.pdf
[3] http://www.bigboxtoolkit.com/images/pdf/bigboxblight.pdf
[4] Price- waterhouse Cooper,*Emerging Trends in Real Estate 2002*

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