



*Home of the Tualatin River National Wildlife Refuge*

# **CITY COUNCIL MEETING PACKET**

**FOR**

**Tuesday, February 2, 2016**

**Sherwood City Hall  
22560 SW Pine Street  
Sherwood, Oregon**

**5:30 PM City Council Executive Session**  
(ORS 192.660(2)(f), Exempt Public Records)

**6:00 PM City Council Work Session**

**7:00 pm City Council Regular Meeting**

**URA Board Executive Session**  
(ORS 192.660(2)(e), Real Property Transactions)  
(following the City Council meeting)



Home of the Tualatin River National Wildlife Refuge

### **5:30 PM EXECUTIVE SESSION**

1. Exempt Public Records, ORS 192.660(2)(f) (Josh Soper)

### **6:00 PM WORK SESSION**

1. New Water Rate Projections (Craig Sheldon)

### **REGULAR SESSION**

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PRESENTATION

- A. State of the City Address (Mayor Clark)
- B. Brief Reception to follow

5. APPROVAL OF AGENDA

6. CONSENT AGENDA

- A. Approval of January 19, 2016 City Council Meeting Minutes
- B. Resolution 2016-001 Authorizing City Manager to extend contract with TKW for Municipal Audit Services (Joe Gall, City Manager)

7. CITIZEN COMMENTS

8. PUBLIC HEARINGS

- A. Ordinance 2016-005 Amending Title 9 of the Municipal Code relating to public peace, morals and welfare, Chapter 9.52 Prohibiting of Noise; Declaring an Emergency (Josh Soper, City Attorney)
- B. Ordinance 2016-006 Amending Title 9 of the Municipal Code relating to public peace, morals and welfare by adding a new Chapter 9.64 relating to targeted residential picketing; Declaring an Emergency (Josh Soper, City Attorney)

## **AGENDA**

### **SHERWOOD CITY COUNCIL February 2, 2016**

**5:30 pm Executive Session  
(ORS 192.660(2)(f), Exempt Public Records)**

**6:00 pm Work Session**

**7:00 pm City Council Regular Meeting**

**URA Board of Executive Session  
(ORS 192.660(2)(e) Real Property Transactions)  
(following the City Council meeting)**

**Sherwood City Hall  
22560 SW Pine Street  
Sherwood, OR 97140**

## 9. CITY MANAGER REPORT

## 10. COUNCIL ANNOUNCEMENTS

## 11. ADJOURN TO URA BOARD EXECUTIVE SESSION

### **How to Find Out What's on the Council Schedule:**

City Council meeting materials and agenda are posted to the City web page at [www.sherwoodoregon.gov](http://www.sherwoodoregon.gov), by the Thursday prior to a Council meeting. Council agendas are also posted at the Sherwood Library/City Hall, the Sherwood YMCA, the Senior Center, and the Sherwood Post Office. Council meeting materials are available at the Sherwood Public Library. **To Schedule a Presentation before Council:** If you would like to schedule a presentation before the City Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder, 503-625-4246 or [murphys@sherwoodoregon.gov](mailto:murphys@sherwoodoregon.gov)



**SHERWOOD CITY COUNCIL MEETING MINUTES**  
**22560 SW Pine St., Sherwood, Or**  
**January 19, 2016**

**EXECUTIVE SESSION**

1. **CALL TO ORDER:** Mayor Krisanna Clark called the meeting to order at 5:35 pm.
2. **COUNCIL PRESENT:** Mayor Krisanna Clark, Council President Jennifer Harris, Councilors Sally Robinson, Dan King, Linda Henderson, Jennifer Kuiper, and Renee Brouse.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Attorney Josh Soper, City Manager Joseph Gall, Assistant City Manager Tom Pessemier, Police Chief Jeff Groth and Police Captain Ty Hanlon.
4. **TOPICS:**
  - A. **Exempt Public Records, ORS 192.660(2)(f).**

**5. ADJOURN**

Mayor Clark adjourned the Executive Session at 6:27 pm and convened to a work session.

**WORK SESSION**

1. **CALL TO ORDER:** Mayor Clark called the meeting to order at 6:30 pm.
2. **COUNCIL PRESENT:** Mayor Clark, Council President Jennifer Harris, Councilors Sally Robinson, Dan King, Linda Henderson, Jennifer Kuiper, and Renee Brouse.
3. **STAFF PRESENT:** City Manager Joe Gall, Assistant City Manager Tom Pessemier, City Attorney Josh Soper, Police Chief Groth, Police Captain Ty Hanlon, Police Captain Mark Daniel, Community Development Director Julia Hajduk, Planning Manager Brad Kilby, Senior Planner Michelle Miller, Administrative Assistant Colleen Resch and City Recorder Sylvia Murphy.
4. **TOPICS:**
  - A. **Update on Cedar Creek Trail Project**

Senior Planner Michelle Miller provided the Council with a presentation on the Cedar Creek Trail project (see record, Exhibit A). She also provided a Cedar Creek Trail Greenway map (see record, Exhibit B). Michelle provided an overview of the project, the public outreach and the next steps. She said the Cedar Creek Trail project has been divided into sections, Project 1 which is the segment between Hwy 99W and the Murdock Road intersection and Project 2 is the segment north of Hwy 99W to Roy Rogers Road within the Cedar Creek Greenway corridor. She stated the Cedar Creek Trail is part of the Ice Age Tonquin Trail Master Plan which is a Metro regional trail that will ultimately connect Tualatin, Sherwood and Wilsonville with a 15 mile trail. She said the long term vision is a trail network that will connect the entire Portland metropolitan region via a trail system called the 40 mile loop. She discussed the decision making structure and said the City Council makes the final decision and determines the trail alignment. She said the Parks and Recreation Board will provide recommendations as well as the Technical Trail Advisory Committee and the Local Trail Advisory Committee. She commented on the amount of public engagement and the feedback they have received.

She discussed the project in detail and said the design work for Project 1 will be completed by the end of 2016 and construction will begin in 2017 and is projected to be a 9 month process. She said Project 2 will survey the recommended alignment and will begin the design work in order to get cost estimates. She said the information will be provided to the committees in the spring and open houses will be scheduled in late spring.

She discussed grants and funding opportunities and reminded the Council that the City received a \$5.6 million grant for this project and said they hope to leverage that. She provided examples of opportunities and discussion followed.

Council President Harris referred to the proposed crossing at Meinecke Road and asked if an overpass for pedestrians has been discussed. Ms. Miller said it would be ideal to have an overpass or an underpass and commented on the cost constraints and said the City will continue to look for funding opportunities. Community Development Director Julia Hajduk reminded the Council that Hwy 99W is a State Hwy and is under State jurisdiction and that an overpass or underpass would be very expensive. Council discussion followed regarding various crossing patterns at Meinecke and Hwy 99W, safety, traffic concerns and timing of signals.

**5. ADJOURN:**

Mayor Clark adjourned the work session at 6:55 pm and convened to a Regular Session.

**REGULAR SESSION**

1. **CALL TO ORDER:** Mayor Clark called the meeting to order at 7:03 pm.
2. **COUNCIL PRESENT:** Mayor Krisanna Clark, Council President Jennifer Harris, Councilors Sally Robinson, Dan King, Linda Henderson, Jennifer Kuiper, and Renee Brouse.
3. **STAFF PRESENT:** City Manager Joe Gall, Assistant City Manager Tom Pessemier, City Attorney Josh Soper, Police Chief Jeff Groth, Police Captain Ty Hanlon, Police Captain Mark Daniel, Community Development Director Julia Hajduk, Public Works Director Craig Sheldon, Planning Manager Brad Kilby, Administrative Assistant Colleen Resch, and City Recorder Sylvia Murphy.

Mayor Clark addressed the next agenda item and asked for a motion.

**4. APPROVAL OF AGENDA:**

**MOTION: FROM COUNCILOR HENDERSON TO APPROVE THE AGENDA, SECONDED BY COUNCIL PRESIDENT HARRIS.**

A vote was not called and Mayor Clark stated she received a request to amend the order of business on the agenda. Councilor Robinson stated she moves that we change the order so that Citizen Comments are moved to after the Public Hearings as she has a family emergency and will not be able to stay late to be able to vote on the public hearings. Councilor Kuiper stated she has a big project that she needed to complete tonight and will need to leave early. Mayor Clark asked if anyone had a problem with moving Item 7 to Item 8, no objections were received and the following motion was stated.

**MOTION: FROM COUNCILOR HENDERSON TO APPROVE THE AGENDA AS AMENDED, SECONDED BY COUNCILOR ROBINSON. MOTION PASSED 7:0, ALL MEMBERS VOTED IN FAVOR.**

Mayor Clark addressed the next item on the agenda.

**5. CONSENT AGENDA:**

**A. Approval of January 5, 2016 City Council Meeting Minutes**

**B. Resolution 2016-002 Extending the term of the Franchise Agreement between City of Sherwood and Comcast**

**MOTION: FROM COUNCILOR KUIPER TO APPROVE THE CONSENT AGENDA, SECONDED BY COUNCILOR KING. MOTION PASSED 7:0, ALL MEMBERS VOTED IN FAVOR.**

Mayor Clark addressed the next item on the agenda.

**6. PRESENTATIONS:**

**A. Proclamation, January 2016 as School Board Month**

Mayor Clark proclaimed January 2016 as School Board Month in Sherwood and said Council President Harris presented the proclamation at the recent School Board meeting and said she would read the proclamation later in the meeting.

Mayor Clark addressed the next item on the agenda.

**7. PUBLIC HEARINGS:**

**A. Resolution 2016-003 Adjusting Solid Waste and Recycling Collection Rates**

City Manager Joe Gall introduced consultant Chris Bell and said there was a Council work session on the review of financials for Pride Disposal. He said the Council reviews rates every few years and considers

changes and the current rates have been in effect since January 1, 2014 and said the City hasn't had an increase within the past two years.

Mr. Bell came forward and provided the Council with an overview of the City's solid waste and recycling collection system (see record, Exhibit C). Mr. Bell said he is a CPA specializing in garbage rates and has been doing this work since 1999. He said over the last 12 years he has been working specifically for jurisdictions and looking at rates, operational performance of garbage collection and recycling, collections, operations, and landfill. He said there is a standard process of jurisdictions on an annual basis to request financial statements from their franchise hauler or contractor hauler. He said these reports detail the financial impacts, and operational results of the prior year. He explained he reviews this information and then comes up with an operational impact, what they will make in the coming year based on what they did in the past and based on information we know. He gave the example of labor costs increasing. He said disposal adjusts on a regular basis and it's not adjusted by the hauler, it's adjusted by Metro. He said we look at those costs and come up with a garbage rate.

He said he has been reviewing financials for Pride Disposal for several years and it is a family operated company with a great reputation throughout the region. He referred to the exhibit and what is currently being collected in Sherwood, in terms of tonnage collected and number of customers. He said this information is from 2014 and 2015 will be fairly similar. He mentioned Sherwood growth and said this has been a constant operation with minimal changes in the last few years. He referred to collection costs and said there are a few costs that are out of Prides control, one is the disposal cost which is regulated by Metro. He referred to recycling costs and said in the last few years the value has gone substantially down and this year alone they are looking at a change of about \$55,000. He said in the past the value of the material was higher than the processing and in the last few years the value and market is not there. He said a lot of the materials collected are shipped overseas. He said one of the problems with plastics is, we have oil prices at about \$28 a barrel and the value of recycled plastics has plummeted.

He stated that yard debris processing is substantially regulated by DEQ and those costs are increasing. He said labor costs are controlled by the collective agreement with the Teamsters 212. He stated another cost is collection trucks and said Pride has made a substantial investment in the last few years in compressed natural gas collection trucks. He said the trucks are more efficient and the cost of fuel is consistent and repair and maintenance costs on compressed natural gas trucks is much lower than new diesel trucks.

Mr. Bell stated franchise fees are also out of their control and said 5% of all cash receipts collected by Pride within the City are remitted back to the City. He said Pride is one of the few haulers that provides in kind services to the City. He said in 2014 and 2015 they provided the City with close to \$40,000 worth of disposal and hauling expenses, specifically aimed at City buildings and public works services.

He said when he calculated the rates, he calculated the rates for a 10% return and said there is a range between 12% on the high end and 8% on the low end and if that return falls under 8% we adjust the rates. If it falls above 12% we have a rate reduction to set it at 10%. He said most jurisdictions within the Portland Metropolitan area use this similar range. He said the City does not guarantee a 10% rate of return, the City sets the rates at 10% of the expenses and if expenses increase more than anticipated then the return will be less. He said if things turn around in the recycling market, they could earn more.

He said the other issue is the City Council sets and determines what the policy direction is on rates. He said with the proposed rates, the rates are very similar to other jurisdictions in this area. Mr. Bell referred to the exhibit and Comparable Residential Collection Rates and said the most common size of a residential can is 32 gallon.

Mr. Bell said if the Council adopted the new rates, they would become effective March 1, he offered to answer Council questions.

Councilor Robinson said everyone she has talked to regarding rates in general keep asking and said their salaries have not gone up so why should she approve a rate increase and why should the utility get 10% profit when they barely make their expenses. She asked if Mr. Bell was able to address this and asked why it was so critical for Pride to have an increase in fees.

Mr. Bell said, it is critical. He said they are providing a service dictated by the City and they are not only regulated by the City but by guides of the Portland Metropolitan Service District as far as providing recycling services, as well as the state. He said the 10% rate of return is pre-tax and they will pay about 36% in taxes on that, which brings this down to 7%. He said they also have City and State taxes, and this may narrow it down. He said they also have some reserves they have to put in a rears. He gave the example of recycling and said when we previously set the rates we assumed there would be some value in recycling and at that time they were making money on recycling, although not a lot. He said this year they are going to be paying \$55,000 a difference of about \$100,000 in the last two years. He said if they aren't making a margin on that, they will not have the money necessary to pay that difference in disposal processing. He said their alternative is to borrow and at some point when they have to borrow and they can't make money or a profit, the service will either be cut or as seen in other jurisdictions, where they utilize trucks that are not well maintained. He gave an example of a different hauler gouging customers and charging a disposal increase that wasn't there. He said having a viable utility that is well funded serves the citizens a lot more. He commented regarding the value of service Pride is providing and said there are some good haulers and some not so good hauler and said Sherwood is fortunate to have a good hauler and said he believes you get what you pay for. He referred to the 10% and said Pride doesn't get the full 10%, others get a cut of that.

Councilor King asked regarding Pride using CNG (Compressed Natural Gas) trucks and said they have a much higher initial cost and they are not receiving the benefit of lower diesel prices. Mr. Bell confirmed the use of CNG trucks and said if you look at the price comparison of compressed natural gas versus diesel, the newer diesel trucks do pollute less, but burn more fuel. Mr. King asked for the cost of a CNG truck and Mr. Bell replied about \$48,000 and said you also have the fueling station. Mr. King stated recyclables are no longer profitable and Mr. Bell replied not right now.

Mr. Bell referred to mixed waste paper and said this makes up about 60% of the material that is put out and the current value is about \$40 per ton and if taken to Far West it cost \$65-\$75 per ton to process it. He said it is costing them \$35 a ton and they can't throw it away as state law states if they collect it on curbside, they must process and sell it. He said unfortunately the ratepayer gets struck with the difference between the value of the material and the cost to process and the cost to market.

Councilor Kuiper referred to Tigard and Tualatin and their margins and said it looks like they are not looking to increase their rates. Mr. Bell said he can't speak for Tualatin and said Tigard will be adjusting their rates up this year. He explained Tigard's CPI adjustment process.

Mayor Clark asked if Tigard's adjustment will go before their Council. Mr. Bell replied he did not believe the CPI adjustment does, but on a true up, it does. Mr. Leichner with Pride Disposal indicated Tigard's CPI does go before their Council.

Councilor Kuiper asked what Tigard's increase would be for 2016.

Mr. Leichner said last July Tigard raised their rates 7% to get them through 18 months and they will look at the rates this summer with the adjustments Mr. Bell spoke of, making it effective January 1, 2017.

Discussion followed regarding the comparable rates between jurisdictions.

Councilor Kuiper referred to Sherwood's rate sheet and a 35-gallon can and the comparable rates indicating a 32 gallon can. Mr. Bell stated the standard for many years was a 32-gallon can and depending on the cart manufacturer it can be a 32 or 35 gallon can. He said this is also the same with the 60-gallon can, it can be a 64 or 65 gallon.

Mayor Clark asked Mr. Bell to comment on the Washington County rate as they appear to be much lower.

Mr. Leichner said Washington County reviews their rates annually and makes adjustments in July if warranted. He said their services are a bit different than Sherwood and Tigard and their recycling program is every other week as is their yard debris. He said Sherwood has recycling every other week and weekly yard debris.

Councilor Brouse confirmed Sherwood's last rate increase was 2014 and referred to the other cities listed in the comparable chart and the cities serviced by Pride. Mr. Leichner replied they do not service Tualatin or Lake Oswego and have a very small area in Beaverton.

Councilor Harris asked if Sherwood could make changes to our pickup schedule and referred to yard debris pickup in Tigard being every other week and asked if this was an option for Sherwood. Mr. Leichner replied pickup was every other week years ago and the Council decided to have weekly service as they had a lot of citizen requests. He said this would be a Council decision to change it.

Councilor King said when he was on Council along with Councilor Henderson back then, the vegetation has aged and has gotten more mature and this was the reason we decided to have weekly service.

City Manager Gall asked if service levels were adjusted would this affect the rates. Mr. Leichner replied yes and said there would be a revenue and cost analysis and he is sure it would have an impact.

Councilor Harris said we may see that people are more interested in not increasing the rates and having that collected every other week.

Mayor Clark thanked Mr. Bell and Mr. Leichner.

Councilor King commented regarding having more cardboard and being able to set it out. Mr. Leichner replied correct, as long as it was prepared properly and said Pride can provide a second cart for mixed co-mingling at no charge.

Councilor Harris asked regarding a recycling credit and asked if this is gone. Mr. Leichner replied yes and explained the former credit process and challenges.

Mayor Clark opened the public hearing and the City Recorder read the public hearing statement.

Tony Bevel, Sherwood resident came forward and said he is sure one of the biggest costs for Pride is gasoline and asked what happens to the gas powered trucks once they transition to natural gas and will they make any money off of this. He asked how much have they saved in gasoline costs? He said 10% seems like a nice margin, with 5% going back to the City and asked why does the percentage need to be 5% back to the City.

Kim Young, Sherwood resident approached the Council and said the information was very helpful and asked regarding language in the resolution. She said the City can determine the 8-12% and the recommended 10%. She asked if the City can choose 8%, and if so, would this mean not as much of an increase.

City Manager Gall asked Mr. Bell and Mike Leichner to respond to the questions.

Mr. Leichner referred to the question of what happens to the old trucks and said in some cases they scrap the bodies out if they are wore out and the sell the chassis's and in some other cases they sell the trucks to out of state operators. He said Oregon is pushing for use of clean fuels as part of their legislation in the past few years and Pride are trying to stay with that curve rather than falling behind and needing to purchase several trucks all at once which would be a very large impact to the rates. He said we try to purchase a couple of trucks every year to spread out the depreciation costs. He referred to the cost of fuel and said when the price goes up or down it is part of the costs they report to the City, and with the drop in fuel costs and even with the price of diesel, natural gas is still cheaper by the gallon or energy unit. He said without the tax credits we are paying over a dollar a gallon equivalent for our natural gas. He explained the current fueling process with drivers saving time, 5-6 minutes as they come in and plug the trucks in and they fuel themselves overnight. He said they save 5-6 minutes every day with every driver and this figures into the rate costs.

Councilor King asked if all the trucks are CG. Mr. Leichner responded about half the fleet is at this point and they started replacing trucks about four years ago, replacing 2-3 per year on a normal replacement schedule over a ten year period.

Mayor Clark clarified that Pride is a utility provider and is not owned by the City, and the trucks are owned by Pride and not the City. Mr. Leichner confirmed. She said the cost to replace trucks is a cost to Pride. Mr. Leichner responded correct and said when the trucks sell, if there is any value from that, it is part of the revenue that goes into the total revenue base, as well as the sale of any equipment.

City Manager Gall said because Pride provides service outside of Sherwood, the City has Chris Bell come in and look at the financials as we want to look at Sherwood only. He said the franchise fee is 5% and this is the standard fee we charge to all utilities, public and private, this is for the use of the City's right of way. He said this is by code. He said the City charges its own utilities a 5% franchise fee, water and storm water utilities also pay a 5% fee. He said if the Council lowers the fee for Pride, they will have other companies making the same request, he said this is the caution with lowering the franchise fee.

Mr. Gall referred to the question of why 8% and said this is a range and we would need to run some numbers to look at it.

Councilor Harris asked if they are asking for a 10% increase or what is the percentage of the increase.

Mayor Clark stated this increase brings them to 10% and Mr. Leichner said it's about a 6% increase.

Mr. Gall referred to the staff report and said in some sectors Pride is actually losing money right now. Mr. Leichner replied correct. Mr. Gall clarified the aggregate is a combination of three sectors, and Mr. Leichner responded, a combination of residential, commercial and drop box.

Mr. Gall said if the Council wanted us to go back and look at running this at 8%, if that is the target and or look at different service levels, his recommendation is we go back and do more work and bring that back for the Councils consideration, if you want a smaller rate increase, if that is what he is hearing from at least a couple of Councilors.

Councilor Kuiper referred to the aggregate rate and said it's a big range of -1.63% to 7.99%, and said going back to recalculate an average of 8%, is this what we are talking about as an option.

Mr. Bell replied this is an option and said one of the risks in doing that is you will have more frequent rate increases. He said this year, we have gone two years without a rate increase and prior to that it was 3 or four years without a rate increase. He said usually when you lower that margin, you will see Pride more often.

Mayor Clark closed the public hearing, and asked for additional Council questions or comments.

Councilor Henderson said this franchise agreement is somewhat unique as it's a monopoly, as we don't have another franchise provider. City Manager Gall replied and referred to having one electric company in town and one natural gas company and said it's not as unique. Councilor Henderson referred to the range of -1.63% to 7.99% and the language on the franchise agreement and profit range that the hauler is able to request.

Mr. Bell said there is not a specific number in that. Councilor Henderson asked when you quote other haulers, this is an industry average? Mr. Bell replied correct. She asked what is that industry average based on? Mr. Bell replied it is based on many things on how we got to the 10%.

Councilor Henderson referred to Sherwood having SDC charges, depending on the type of service and referred to a transportation change for a drive-in and this not being the same SDC charge for a medical office because the service is different, therefore the impact on the community is different. She asked if the ranges are a function of the industry, based on an industry or western standard.

Mr. Bell stated a couple of years ago and going back to 1988-89, Portland was an open market for garbage collection. He said when they looked at regulating this they had in-depth studies and one of the questions was what is the range, what is a reasonable rate of return, given the services provided. He said at the time 10% is the number that came up and since then, Portland has adjusted it down from 10% to 9 ½ %. He said keep in mind, every year Portland has adjusted it to 9 1/2 %. He said if you want to adjust to a lower rate, you will have more frequent rate adjustments. He referred to a Coastal City with a rate of

12% and why it's 12%. He said in the open market, if you're savvy enough for a hauler, you can get 10-15% and if you're not a savvy hauler, maybe you're getting 4% or 5%. He said there is an open market element and most jurisdictions around here set it at 10% and they have the 8-12% range. He said there have been instances where it has gone above 12%, where they reduced it down, but usually given the economy over the last few years, the nature of the tipping fee increases for Metro, the rates have been increasing every year. He referred to the trucks and equipment replacement as also being a factor. He said we are hoping to get to a point that we level out, with recycling markets and tip fee, where we have a couple of years that we don't adjust the rates and we are within the range. He said this is how it was in prior years, we went 3-5 years without a rate adjustment and now we are seeing more frequent rate adjustments because of these issues.

Councilor Henderson asked how often does Metro raise their rates? Mr. Bell replied every year and said two years ago there was not an increase.

Councilor Henderson asked Mr. Leichner in the years that he did not increase the rates, did he just absorb the Metro increase internally? He said sometimes we absorbed it or were able to handle it as recycling markets were going up, and with the price of fuel going down a few years ago when the economy dropped. He said they needed it but also considered everyone else was in the same situation and said you can only do that for so long.

Councilor Henderson asked what is the single most difficult cost you have that is hard to control or predict, fuel? Mr. Leichner said fuel is a major part of our costs, but percentage wise, it's not a big part of our overall cost, it's more a frustration with our regional government as far as the amount of control they are trying to exert on the transportations which affect our collection company. He said the contract ends with Waste Management at the end of 2019 and there is talk about where it will go and possibly incinerating it or aerobic digestion. He said all these programs will be a big cost increase and this is the fear as we may be looking at a \$10-\$20 per year increase for 1 or 2 years, and this is going to be tough for everyone. He said if the economy doesn't pick up and recycling doesn't come back, we were getting as much as \$80 per ton which helps keep the rates flat and now we are paying \$30-\$40 per ton and he doesn't see this changing for a few years.

Councilor Henderson asked when Metro makes the next decision who gets to weigh in on that? Mr. Leichner said all the local jurisdictions have a voice in that but it will be a tough one to battle.

Councilor Brouse asked if the Council were to ask Pride to go back and do an analysis, if we moved to a bi-weekly pickup on yard debris, what would the difference be, if any. Mr. Leichner replied he couldn't really provide an answer and explained past practices of weekly pickup.

Council President Harris said she would like to have that number.

Mayor Clark referred to the exhibit indicating rates of neighboring jurisdictions and said in our packet it talks about the *City determined through an analysis of financial information from Pride Disposal that their aggregate profit rate for 2014 ranged, depending on the type of collection service, with an overall aggregate rate of a positive of 6.1%, correct?* Confirmation was received. She said they are receiving a return and they are in the positive in their recovery. She said when she looks at the comparable numbers to our neighbors, the consultant talks about in the future we expect our neighbors to be raising their rates. She said she heard that a lot with water and yet our neighbors never made it to us and we kept being the

highest. She said this concerns her when she hears “in the future...”. She said she wants to look at what we have now and we are the highest in every category that is hitting our regular residential residents and that concerns her. She said she believes we get great service and believes Pride is awesome and she doesn't hear complaints about the provider. Their trucks are clean, quiet and they are timely. She said this is not what we are talking about here. She referred to comments made by the consultant about if we don't increase the rates we could get polluted trucks, truck leaks, poor services and said she doesn't believe this is a fair assessment and doesn't believe that Pride is going to provide this type of service. She said she thinks she sees a fair request asking for an increase. She said the problem she has is social security got a zero percent increase, our economy is not doing great and neither is Wall Street and people are suffering and this hits every segment of our population the same. It hits the people on social security and those in lower economic stratosphere. She said she is not comfortable with saying we need to make the increase to be higher than the highest rate, with the exception of Lake Oswego for the 32 gallon. She said she believes this is an unreasonable request when across the board all of our neighbors aren't getting increases in their salaries or increases to their social security. She said at this point she doesn't feel it's appropriate to increase the collection rates on our residents. She said it is critical that we provide a service and it is required by the City for us to require this service. She said Pride provides a great service and doesn't believe this will change but at this point she doesn't feel an increase is appropriate.

Council President Harris said she tends to agree and fees have increased a lot and a 6% increase is a huge increase and she would love to get a 6% raise but didn't and doesn't know a lot of people that did. She said she understands the predicament they are in especially with the recycling, that is difficult. She said this is one reason she thought it might be a good idea to look at the yard debris pickup because if that helped mitigate the cost, it might be an option. She said there is always the option to take your yard debris in as well if you have extra yard debris. She said she has a lawn service and they take their yard debris for her and her can is always empty. She said she thinks there is a way to be a community around it and work with it, especially with yard debris. She said she is not comfortable with the increase either, but is willing to look at other options.

Councilor Kuiper stated she believes in fair compensation for fair services and believes Pride provides an excellent service and believes they should be paid and compensated for great service. She said she also is thinking of ways we can look at our garbage collection, recycling and yard debris to see if we can make some changes to have a situation that Pride gets what they need to keep going and power through what we are seeing in the oil markets. She said this is a great example of how interconnected our economies really are, Sherwood is not an island and we are very connected to the rest of the world and whatever happens in the oil markets will reflect in some fashion on our pocketbooks, as we pay less at the gas pump we might pay a bit more in rates. She said she is not saying that we should increase the rates as they are, but does agree with Council President Harris that we could look at these to see where we can make adjustments, if any, and take another look before we move forward.

Councilor Henderson said if we are looking at maintaining rates and decreasing the level of service, is this what our citizens want? Mayor Clark said this is not what we are looking at, there were suggestions made and what we are looking at and talking about now is the collection rate increase. She said other Council members were talking about the willingness to take a look at other scenarios, so it might change this chart if Pride was able to go to a biweekly yard debris, that might necessitate a smaller change, but will not certainly decrease the rate. Councilor Henderson said this was a service we requested because constituents requested it. She said the City is maturing and commented about the services the City

receives from Pride which are not paid for; yard debris, recycling, shredding services and garbage. If we were to change that service in attempts not to increase the rate, we are then providing the same charge for less service.

Councilor Brouse asked if it would be a motion to request a study be done and get more feedback from the community in regards to what they would like to see in service changes or collection.

City Manager Gall said his suggestion is, the Council has a proposal and he has heard some members of Council are not supportive of this proposal suggested they vote on what is in front of them and if that fails there could be an additional motion that could have support to direct staff to work on some alternatives and come back with a range of alternatives to either live within the rates that we currently have and what that looks like, does that mean less services? He said this is a different conversation than what is before you tonight, which is a proposed rate increase based on the information provided. He suggested keeping the issues separate.

**MOTION: FROM COUNCILOR ROBINSON TO CHOOSE NOT TO ADOPT RESOLUTION 2016.....**

City Manager Gall interjected to assist Councilor Robinson on motion language and Council comments followed.

City Attorney Soper interjected and said if no one was willing to make a motion it would die from a lack of a motion.

Mayor Clark asked if anyone wanted to make a motion, no motion was received.

**Resolution 2016-003 died due to lack of a motion.**

Councilor King said if the Council wanted to break it down further, people could be charged for more recycling they put out.

Mayor Clark said in the future if we would like for Pride to come back with some options, something other than just raising the collection rate, it sounds like the Council would be interested in that, and we could schedule work sessions with staff to talk about options and opportunities for working on solving the problem other than just increasing the rates.

Councilor Kuiper said Pride is currently providing services to the City and we are not paying for those services and suggested this needed to be added to the conversation. Mayor Clark stated these are all included in the options that staff will bring forward.

Mayor Clark addressed the next item on the agenda.

**B. Ordinance 2016-001 Repealing Chapter 3.25 Marijuana Tax**

City Attorney Josh Soper stated this is the second hearing on the repeal of the City's existing marijuana tax. He noted the City enacted this tax prior to the passage of Measure 91 in the hopes that it would be grandfathered in and said unfortunately that was not the case. He said this ordinance would repeal the

existing tax and there is a separate ordinance later on the agenda to potentially put a new tax in place as allowed by State law.

Mayor Clark opened the public hearing.

Alan Pearson, Sherwood resident approached the Council and stated he is fiscally responsible in his orientation toward government. He said the marijuana tax is a sin tax and he noted that Sherwood is getting a medical marijuana dispensary. He referred to Chief Groth's comments regarding the increased cost of policing due to this facility which would be paid for by the tax on marijuana. He said he does not smoke marijuana and therefore will not pay the tax. He said if they do not tax marijuana he will be paying the tax to pay for the needed increase in police protection. He asked why the Council would repeal the 3.25% tax rate and substitute it with a 3% tax rate and said it is irresponsible to not have a tax at all on this product. He noted we will have to pay for it and he does not want to pay for it. He said if you do not tax this product the citizens of Sherwood will be taxed to pay for the increased costs.

Councilor Harris asked to clarified that it is 15% tax that is proposed to be repealed.

Mr. Soper stated that 3.25 is the Chapter in the Code and the tax rate is currently 10% and it is a tax on recreational marijuana not on medical marijuana. He said the medical marijuana tax rate under the current code is 0%. He said that prior to Measure 91 going into effect cities took advantage of putting a tax on marijuana hoping that it would be grandfathered in. He stated that Measure 91 does not allow these tax rates to be grandfathered and does not allow cities to have a local tax except they may impose a tax of a maximum of 3% if the city refers it to the voters. He said Chapter 3.25 in the code is preempted by State law and the only tax that can be put into place is a maximum of 3%.

With no other public testimony received, Mayor Clark closed the public hearing.

Councilor Henderson asked Mr. Soper if Council is able to pass a tax on medical marijuana.

Mr. Soper said State law is not 100% clear and his understanding is that it prohibits a tax on medical marijuana. He stated there are a few cities that are taking a different approach and believing that they could tax medical marijuana. He noted the information he has received indicates strongly that the intention of the legislature is to prohibit a tax on medical marijuana and that if cities do move forward there will be a bill clarifying that taxing medical marijuana is prohibited.

Councilor King said if those cities collect taxes they will have to refund.

Council President Harris noted that if the City does not repeal this tax it is illegal under State law. The following motion was stated.

**MOTION: FROM COUNCIL PRESIDENT HARRIS TO READ CAPTION AND ADOPT ORDINANCE 2016-001 REPEALING CHAPTER 3.25 OF THE MARIJUANA TAX, SECONDED BY MAYOR CLARK. MOTION PASSED 7:0, ALL MEMBERS VOTED IN FAVOR.**

Mayor Clark addressed the next item on the agenda.

**C. Ordinance 2016-002 Declaring a Ban on Recreational Marijuana Producers, Recreational Marijuana Processors, Recreational Marijuana Wholesalers, and Recreational Marijuana Retailers; Referring Ordinance**

City Attorney Soper stated this is a second hearing and noted that Council requested a few changes at the first hearing. He said previously there was a single ordinance banning all of the permissible categories of recreational marijuana facilities and medical marijuana facilities. He stated this ordinance only applies to the permissible categories of recreation facilities that can be banned. He noted it lists all of the recreational categories that are allowed to be banned. He stated the emergency clause has been removed because it was clear that there would not be a unanimous vote which is required for an emergency clause. He noted there was one scribner error regarding the new effective date language and he read the new effective date language into the record. He said the new language is in Section 5 and should say, *"this ordinance shall be effective upon certification of the election results by the City Council if it received the affirmative majority of the total number of votes cast thereof"*.

Mayor Clark opened the public hearing. With no one coming forward, Mayor Clark closed the public hearing.

Councilor Brouse said she has been contemplating since the first reading and said she used four different lenses to look at this. She said the first lens is based on personal experience and growing up in a household where marijuana was prevalent, abused and sold. She said the second lens is regarding alcohol and tobacco and other drug prevention instructor teaching for the last 19 years and the merits of saying no to those items. She stated the third lens concerns promoting business growth and the economy and offsetting the tax burden of the residents. She said the fourth and most important lens is the viewpoint of the citizens and she said in her conversations with residents, there is overwhelmingly opposition to having recreational sales or distribution centers. She noted based on those four lenses she formed her own opinion that this issue should go before the voters.

Councilor Robinson stated that she will have to leave shortly and presented a motion.

**MOTION: FROM COUNCILOR ROBINSON TO READ CAPTION AND ADOPT ORDINANCE 2016-002 DECLARING A BAN ON RECREATION MARIJUANA PRODUCERS, ETC, SECONDED BY COUNCILOR KING. MOTION PASSED 5:2. (COUNCILORS HENDERSON, BROUSE, KUIPER, KING AND ROBINSON VOTED IN FAVOR, MAYOR CLARK AND COUNCIL PRESIDENT HARRIS VOTED AGAINST).**

Record Note: Councilor Robinson left the meeting at 8:15 pm.

Mayor Clark explained her vote and said she has a problem with the section regarding financial impacts. She said she does not consider what she wants and considers what is here and real and said Sherwood is not an island. She stated she does not support a ban because we do not get to put borders up around Sherwood and anyone can drive from Sherwood to buy recreational marijuana should we ban it. She said they will come back and smoke it in Sherwood and we will have the problems here and will have to police it here. She noted that if Sherwood bans it they will not receive funding and the citizens will be burdened with an additional fee to provide policing service for something that was banned but cannot be stopped because the State has said that recreation marijuana is legal. She said that is not her personal stance.

She stated she hopes the citizens of Sherwood chose to not ban it so that Sherwood can get the funding and if we don't get the funding there will be a budget issue.

Council President Harris agreed with Mayor Clark and said she visited some dispensaries including Chalice Farms in King City, which is 4.5 miles away. She said the owner stated that 50% of his customers are from Sherwood. She stated those customers are using the marijuana in Sherwood and commented on the amount of money that Sherwood will lose for the Police Department to be able to enforce the laws. She said the Police need the resources and ability to enforce the laws and not take money from our citizen's tax dollars. She stated the money should come from the sin tax and commented on the additional revenue of 3% that Sherwood is imposing. She said towns are seeing \$100,000 monthly in tax revenue from marijuana sales and that would help the Police Department. She said the people in Sherwood that are going to do it are already doing it. She noted the State law is that if a City bans even one use they will not receive revenue and it is an all or nothing situation.

Councilor Henderson said she considered the cost and the burden of having a dispensary would have on the services in Sherwood. She said that is an unknown cost and she would like to see the data that towns are receiving \$100,000 a month.

Council President Harris stated that it is different all over.

Councilor Henderson noted that she has not seen any data that could support that, considering it just started.

Council President Harris said it is not in Oregon and just historically from the other two states.

Councilor Henderson stated that it is unknown what we will receive and if you look at what the law would allow it is 3% so if a recreational dispensary did a \$1 million a year Sherwood would receive \$30,000. She explained that the State tax is graduated and is only on early sales and 10% of it is shared across the State based on population. She said we cannot determine what the revenue will be versus the cost of having a retail dispensary.

Council President Harris apologized and said she did not mean to make it sound like Sherwood would make \$100,000.

Councilor Henderson said that is a gross overestimate of the amount of potential revenue and the cost of having a dispensary would be greater than \$30,000 as the effect has on the community.

Council President Harris said that is considering only the 3% and said if every dispensary in Oregon is making \$1 million that is \$100 million that Sherwood would get a percentage of that plus the 3% local tax.

Councilor Henderson noted that again is a completely unknown amount.

Council Harris agreed that it is unknown and said currently Oregon is outselling Washington and Colorado.

Councilor Henderson referred to the intrinsic issues that arise from a recreation marijuana distribution retailer and said there is an interesting documentary on Netflix called "High Profit". She said it is about

Breckenridge, Colorado and the intrinsic issues. She said her vote to put this issue before the voters because that is what the State law allows. She noted that Sherwood voters did not pass Measure 91 and they have already spoken. She stated there are still so many rules and regulations that have not been determined and she cautioned Sherwood to move slowly. She stated that when the Council makes a decision they need to move forward and honor the decision that was made. She said a decision has been made.

Mayor Clark said she clarified her position after the vote so she could allow Councilor Robinson to vote before she had to leave. She was being respectful to Councilor Robinson and was not belaboring the point.

Councilor Henderson noted that Councilor Robinson did not explain her vote and just made a motion.

Mayor Clark said she chose not to explain her vote and she needed to leave.

Mayor Clark addressed the next item on the agenda.

**D. Ordinance 2016-003 Imposing a Three Percent Tax on the sale of Marijuana items by a Marijuana Retailer and Referring Ordinance** *Second Reading*

City Attorney Soper stated this is a second reading and there have not been any changes except the effective date language that was discussed previously. He said the language handles the timeline related to the election results. He noted this ordinance would impose a 3% local sales tax by the City on the sale of recreational marijuana items at recreational marijuana retail stores within the City boundaries. He stated this has to be referred to the voters and the first opportunity is the November 2016 ballot. He said the relationship between this ordinance and Ordinance 2016-002 is that if a ban is imposed a tax cannot be imposed. He said they can both be on the same ballot and if they both pass there will be a ban but not a tax and that would need to be clear in the ballot title. He said if both issues are on the ballot and the ban fails the tax will go into effect. He said the situation will be the same for the possible ban on medical marijuana.

Mayor Clark opened the public hearing. With no public testimony received Mayor Clark closed the public hearing.

With no Council comments the following motion was stated.

**MOTION: FROM COUNCIL PRESIDENT HARRIS TO READ CAPTION AND ADOPT ORDINANCE 2016-003 IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE, SECONDED BY COUNCILOR KING. MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR ROBINSON WAS ABSENT).**

Mayor Clark addressed the next item on the agenda.

**E. Ordinance 2016-004 Declaring a Ban on Medical Marijuana Processing Sites and Medical Marijuana Dispensaries; Referring Ordinance**

City Attorney Soper said this is a first reading because it is new ordinance that came out of the discussion at the previous Council meeting. He said this ordinance would specifically prohibit the establishment of medical marijuana processing sites and medical marijuana dispensaries within Sherwood. He said it would be referred to the voters and if it passes tonight it will have to come back for a second reading. He noted that there is a grandfathering provision under State law and any of the facilities that are already operating and have their land use permits will be able to continue to operate even if a ban is passed by the voters.

Councilor King clarified that the medical marijuana dispensary we already have will stay.

Mr. Soper said yes. Sherwood has one dispensary and one medical marijuana processing site that have fulfilled all the requirements.

Mayor Clark opened the public hearing. With no public testimony received Mayor Clark closed the public hearing.

Councilor Brouse clarified that this is the first reading and the ordinance will have to go to a second reading.

City Manager Gall stated if the motion fails there will not be a second reading.

Mr. Soper clarified that the Council will have to vote to send the ordinance to a second reading but they are not required to send it to a second reading.

Mayor Clark asked if there is interest to move this ordinance forward to a second reading and asked if it does not move forward does it die on the floor.

Mr. Soper stated that if there is no motion it dies for a lack of a motion.

Councilor King commented that if this ban was approved by the voters it basically gives the grandfathered facilities a monopoly.

Mayor Clark asked for a motion, no motion was received.

**Ordinance 2016-004 died due to lack of a motion.**

Mayor Clark addressed the next item on the agenda.

Record Note: Councilor Kuiper left the meeting at 8:32 pm.

Mayor Clark read the School Board proclamation and urged all citizens to join in recognizing the dedication and hard work of local school board members in preparing today's students for tomorrow's world. She proclaimed January 2016 to be School Board Recognition Month and thanked the school board members for their service.

Mayor Clark addressed the next item on the agenda.

## 8. CITIZEN COMMENTS:

Gail Cutsforth, Sherwood resident approached the Council and discussed upcoming events at the YMCA and said they are crucial fundraising efforts. She commented on the role of the YMCA in the community. She said the YMCA believes that every individual and community deserves the right to thrive. She stated the YMCA is starting their annual campaign and the first event is For a Better Community and is next Tuesday at the Sherwood Center for the Arts from 6 to 8 pm. She said the second event is the annual Dine and Dance on Saturday February 13 at the Sherwood Center for the Arts from 6 to 10 pm. She said the theme is the Love Boat and includes dinner, dancing, silent and live auctions and free childcare at the YMCA. She said tickets are on sale for \$50 for one ticket or \$85 for a couple and the funds raised will support youth and teen programs and services, the diabetes prevention program and financial assistance for those in need. She stated the YMCA is more than a workout place and it does so much for the community. She said last year the Sherwood YMCA gave away \$300,000 in financial aid. She encouraged people to attend the events which provide vital funds to continue important services.

Jan Hatcher, Sherwood resident came forward and said she is legally blind and is a senior and lives at the Carriage Place apartments. She said she received an email that she had to move for no reason. She noted her house is clean, she is quiet, and pays her rent on time. She said she did an interview with Channel 12 and has called the Governor and said this has to stop. She stated she has nowhere to go and does not have family in the area. She said she is afraid and is upset with this no cause eviction and said something has to be done. She said she called the tenant hotline and she wants to stay in Sherwood.

Mayor Clark asked City Manager Gall to help Ms. Hatcher find the correct social services to assist her in navigating what is a frustrating system.

Council President Harris asked City Attorney Soper what a “no cause eviction” is.

Mr. Soper said it has been awhile since he has done any landlord tenant work and said it may mean that at the end of your lease the landlord does not have to renew the lease or if you are renting month to month they are required a certain amount of notice.

Mayor Clark told Ms. Hatcher that Mr. Gall would follow up and see that she gets her in contact with the right people to get the assistance she needs in navigating the process.

Diane Brown, owner of Omni Salon and Day Spa came forward to discuss the parking situation near her business on First Street. She said she has been frustrated by the lack of concern expressed by 3 City employees and the Assistant City Manager Tom Pessemier who has not returned 3 of her phone calls. She said she brought up concerns about parking before a new salon with 12 stylists opened on Second Street on November 1. She said she spoke with Chief Jeff Groth 2 ½ years ago and the parking problem has gotten considerably worse since then. She stated she was told recently that Sherwood is a walking Old Town and business patrons can park and walk. She said for her particular business her clients are in the salon for an hour and up to three hours and her independent contractors are having difficulty parking on the street due to a house under construction off of Oak that has been ongoing for over a 1 ½ years. She stated the Montessori School has cones in the street that have been there for over a month that have been taking up 4 to 5 parking spots. She stated she is also concerned for the safety of those who have to park 2 to 3 blocks away at night and referred to the recent attack at the Cannery Row apartments in mid-December. She asked when the last parking survey was done. She said the City has responded that there is ample parking and she asked if that survey was done before all the new businesses opened. She asked for a copy of the parking survey and requested a current parking survey. She said she understands

the City owns 2 properties off of First Street and are planning to build a parking lot in the summer of 2016 and she is concerned that they will close the Robin Hood Theatre parking lot. She said that lot is always full and asked how is building the other parking lot going to solve any issues if you close the Robin Hood lot. She referred to the City's Mission Statement which states the City will provide services and infrastructure to support the highest quality of life for the residents, businesses and visitors in a fiscally responsible manner. She said the infrastructure would be the parking and the responsible manner would be returning 3 phone calls. She noted the lighting around her business is not suitable for nighttime walking. She stated the City took the time to put up posts and chains to prevent parking in the future lot instead of graveling it and helping people out. She asked for a solution to the problem and not creating more problems by chaining off areas and not letting people park.

Mayor Clark asked staff to contact Ms. Brown and respond to her concerns.

Kim Young, Sherwood resident approached the Council and thanked the Council for taking into consideration the issue of raising the Pride rates. She agrees that Pride gives great service and is probably due some sort of increase but thanked Council for looking at it further and giving citizens options. She commented on the incremental effects of continual rate increases add up. She appreciates Council directing the legislation back to staff to look at other options such as reducing the services or the percentage.

## **9. CITY MANAGER REPORT:**

Mr. Gall said on Friday he received a notice of resignation from Finance Director Julie Blums. He stated he is in the process of identifying an Interim Finance Director and commented on the budget cycle timeline. He said the recruitment for a Finance Director will be posted by the end of the week. He commented on the retail space at the Sherwood Art Center and said they have been negotiating with a company to lease the space. He said he is meeting with them next week and hopefully can come to an agreement. He understands the frustration of the space still being open but said it has only been a year.

Mr. Gall asked Community Development Director Julia Hajduk to discuss the next steps with recreational marijuana in light of the Council's decision. Ms. Hajduk reminded the Council that even though they just passed an ordinance to ban recreational marijuana and place the issue on the ballot it created a moratorium until the election. She said staff will be working on code language concerning recreational marijuana facilities in the event that the ban fails.

Mayor Clark said she appreciates the forward thinking and the City has to be ready for either decision. She said she is proud of this Council and City staff for their approachability.

Councilor King asked if the issue of housing is something that the Council would like to address in the future. Mayor Clark said housing needs will be on the horizon and is an issue.

Mr. Gall said the issue of affordable housing in the region and the State is important.

Councilor King referred to rent ordinances. Mr. Gall said there is a lot of discussion in Portland and it may be worthy of a conversation. He said Council may want to discuss this at the goal setting session.

Mayor Clark said she will be attending a house summit with Metro and she will bring the information back to Council.

Councilor King asked for an update on the YMCA contract.

Mr. Gall said they are going to hopefully finish the ongoing negotiations regarding Article 33. He said Mr. Soper has been meeting with the YMCA attorney and there is draft language that will be on the Council agenda in February. He said it clarifies the language concerning outside users. He noted the language is being finalized for Council approval and then will need to go before the YMCA for approval. He said the focus is Article 33 and once that is completed staff will look for direction from the Council.

Mayor Clark addressed the next item on the agenda.

## **10. COUNCIL ANNOUNCEMENTS:**

Mayor Clark announced that she was unable to attend the grand reopening of US World Class Taekwondo and Council President Harris attended in her absence. She said Master Michael Tornincasa provided her with an honorary black belt and she thanked him. She said she attended the Chamber breakfast with Senator Thatcher and Representative John Davis and said they provided an update of what to expect in the short session. She announced that last Wednesday she attended Mayor Denny Doyle State of the City address in Beaverton and stated that her State of the City will be at the next Council meeting at 7 pm. She said the meeting will be live streamed and placed on the City website. She said she will be voting on transit on the Southwest Corridor Plan and encouraged everyone to keep involved in transit. She commented on the need for transit in Sherwood and said they have been projecting increased services and changes in the routes to Sherwood and Sherwood will be better served. She stated that she is on the R1act1 Board which is a transportation board that decides for the State where money comes from, from ODOT for projects all over. She said Sherwood has a project on the list to clean up Hwy 99 and thanked Ms. Hajduk for her work. She stated that on Friday, January 22 she will be on the KUIK 1360 radio program at 8 am for the second time and she will discuss what is going on in Sherwood. She announced the Council will have a retreat on Saturday, January 30 from 9 to 11 am at the Police Station to discuss topics for the future.

Councilor King announced that Sherwood Main Street meets Thursday at 8 am at the Rebekah Lodge. He said they will be discussing upcoming events such as St. Patrick's Day and another Art Walk.

Council President Harris said applications are being accepted for the Library Advisory Board which she is the Council liaison too and said they meet every other month. She said the Civic Center turned 10 years old and they celebrated with a party. She said the Library offers assistance with technology devices and online checkouts. She commented on the reduced food waste program on February 23 at the Library. She said on January 21 at 3:30 the Library will have an arts and crafts event. She noted the Sherwood Center for the Arts is having a classic film series and a family matinee series.

Councilor Brouse said Sherwood is fortunate to have two Rotary Clubs. She said the Old Town Rotary Club is having an event called the Princess Promenade to help fund their service projects. She stated the Chamber of Commerce is having a forum regarding the 2016 legislative review tomorrow at the Stock Pot. She attended the Sherwood School Board Meeting last Wednesday where they discussed an update

on the strategic plan which looks positive. She said there will be a Water Consortium meeting next Wednesday.

Councilor Henderson said she will not be attending the next Community Development Block Grant due to the Council retreat and Community Services Director Kristen Switzer will go in her absence. She said the VPA is presenting a junior version of Rikki-Tikki Tavi on Saturday, January 30 at 1 pm and 5:30 pm at Sherwood High School. She referred to the Police analysis study and said they are soliciting information and on January 28 at 7 pm at the Sherwood Center for the Arts there will be an opportunity for feedback.

Assistant City Manager Tom Pessemier added there will be an online survey as well.

City Manager Gall commented on the Police Department staffing study and said he anticipates it will be completed in early February and there will probably be a work session to discuss the results.

**11. ADJOURN:**

Mayor Clark adjourned the meeting at 9:10 pm.

Attest:

\_\_\_\_\_  
Sylvia Murphy, MMC, City Recorder

\_\_\_\_\_  
Krisanna Clark, Mayor

**TO:** Sherwood City Council

**FROM:** Joseph Gall, ICMA-CM, City Manager  
**Through:** Josh Soper, City Attorney

**SUBJECT: Resolution 2016-001, Authorizing the City Manager to Extend the Current Contract with the Firm of TKW for Municipal Audit Services**

---

**Issue:**

Shall the City Council authorize the City Manager to extend the current contract with TKW for municipal audit services?

**Background:**

The City of Sherwood is required as local government in Oregon to have their annual financial statements audited by an independent auditing firm licensed to perform municipal audits. In 2011, the City selected the firm of Talbot, Korvola & Warwick (TKW) through a competitive RFP process. The Sherwood City Council approved a contract with TKW by approving Resolution 2011-026 on March 15, 2011. The term of this contract was for a five-year period and the end of the contract period is approaching on June 30, 2016.

In light of the recent resignation of the Finance Director and the beginning of the budget development process for FY2016-17, the City Manager is recommending a one year extension of the current contract with TKW. This would provide an additional year of stability with the current outside auditing firm while recruitment of a permanent Finance Director moves forward. In early 2017, the City Council can revisit the question of retaining this current firm or conducting another RFP process. All of the terms and conditions of the current contract would be extended with the additional one year term.

**Financial Impacts:**

There is no direct financial impact in the current fiscal year by extending this contract one year. The costs for the municipal audits is built into each fiscal year's budget. The current contract does have an automatic annual increase of 4% each year, but TKW will be only seeking a 3% increase for the additional year.

**Recommendation:**

Staff respectfully recommends City Council approval of Resolution 2016-001, authorizing the City Manager to extend the current contract with the firm of TKW for municipal audit services.



**RESOLUTION 2016-001**

**AUTHORIZING THE CITY MANAGER TO EXTEND THE CURRENT CONTRACT WITH THE FIRM OF TKW FOR MUNICIPAL AUDIT SERVICES**

**WHEREAS**, local governments in the State of Oregon are required to have their annual financial statements audited by an independent auditing firm licensed to perform municipal audits; and

**WHEREAS**, the City of Sherwood has a current contract with the firm of Talbot, Korvola & Warwick (TKW) to provide such municipal audit services; and

**WHEREAS**, this contract was authorized by Sherwood City Council through Resolution 2011-026 on March 15, 2011; and

**WHEREAS**, the term of the contract was for five years and it is scheduled to end on June 30, 2016; and

**WHEREAS**, the City Manager is recommending a one year extension of this contract.

**NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

**Section 1.** The City Manager is hereby authorized to extend the current contract with TKW for one additional year.

**Section 2.** This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 2nd day of February, 2016.**

\_\_\_\_\_  
Krisanna Clark, Mayor

Attest:

\_\_\_\_\_  
Sylvia Murphy, MMC, City Recorder

Agenda Item: Public Hearing, *First Reading (Emergency)*

**TO:** Sherwood City Council

**FROM:** Josh Soper, City Attorney  
Through: Joseph Gall, ICMA-CM, City Manager

**SUBJECT:** **Ordinance 2016-005**, Amending title 9 of the Municipal Code relating to Public Peace, Morals and Welfare, Chapter 9.52 Prohibiting of Noise; declaring an emergency

---

**Issue:**

Shall the City Council approve amendments to the City's ordinance related to prohibiting of noise?

**Background:**

At the January 5, 2016 Council meeting, Council heard from a number of concerned citizens and others regarding recent noise incidents in Sherwood. As staff briefly discussed at that time, one possible means of addressing this problem is through improvements to the City's noise ordinance.

The attached ordinance is Phase 1 of an effort to update, improve, and modernize the City's noise ordinance and to bring it more closely in alignment with the League of Oregon Cities Model Noise Ordinance. This phase brings the general structure of the ordinance in line with the LOC Model Ordinance and includes amendments to the introductory sections, the general prohibition section, and general language clean-up. Phase 2 will be brought before Council in a subsequent meeting and will address the specific prohibitions, exceptions, and variation provisions.

The ordinance classifies first violations as Class C, which is a \$250 fine, and subsequent violations as Class B, which is a \$500 fine. These provisions have not changed from the existing ordinance.

This ordinance includes an emergency clause to allow it to take effect immediately, after a single hearing. Approving the ordinance on an emergency basis requires unanimous approval by all seven members of Council. Otherwise, it can be amended to strike the emergency clause and be taken to a second hearing.

A "track changes" document showing the changes compared to the existing ordinance in redline is also included for your reference.

**Financial Impacts:**

No direct financial impacts are anticipated. Potential indirect impacts include the cost of prosecuting violations of the ordinance.

**Recommendation:**

Staff respectfully recommends Council discuss and consider adoption of Ordinance 2016-005, Amending title 9 of the Municipal Code relating to Public Peace, Morals and Welfare, Chapter 9.52 Prohibiting of Noise; declaring an emergency

## EXHIBIT 1

### 9.52 Prohibiting of Noise

#### 9.52.010 Purpose

~~This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of Sherwood through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety; or causes public inconvenience, annoyance or alarm to reasonable persons of ordinary sensitivity. It is hereby found and declared that:~~

~~A. The making and creation of excessive, unnecessary or unusually loud noises within the limits of the city of Sherwood is a condition which has existed for some time and the extent in volume of such noises is increasing;~~

~~B. The making, creation, or maintenance of such excessive, unnecessary, unnatural, or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use affect, and are a detriment to public health, comfort, convenience, safety, welfare, and prosperity of the residents of the city of Sherwood; and~~

~~C. The necessity in the public interest for provisions and prohibitions hereinafter contained in this chapter, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, and prosperity and the peace and quiet of the city of Sherwood and its inhabitants.~~

#### 9.52.020 Scope

~~This Ordinance applies to the control of all sound originating within the jurisdictional limits of the City.~~

#### 9.52.0230 Definitions.

As used in this chapter, ~~unless the context requires otherwise:~~

~~"City" means the City of Sherwood.~~

~~"City Manager" means the City Manager of City or the City Manager's designee.~~

"Commercial" means any use of an office, service establishment, hotel, motel, retail store, park, amusement or recreation facility, or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.

~~"Day" hours are between 7:00 a.m. and 10:00 p.m. Monday through Friday and 8:00 a.m. to 7:00 p.m. Saturday and Sunday.~~

"Domestic power equipment" means power tools or equipment used for home or building repair, maintenance, alteration or other home manual arts projects, including but not limited to powered hand tools, lawn mowers and garden equipment.

“Emergency” means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

“Emergency Work” means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

"Industrial" means any use of a warehouse, factory, mine, wholesale trade establishment, or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.

"Motor vehicle" means any land vehicle, which is designed to be self-propelled.

"Night" hours are between 10:00 p.m. and 7:00 a.m. Monday through Friday and 7:00 p.m. and 8:00 a.m. Saturday and Sunday

"Noise sensitive" means any use of a church, temple, synagogue, day care center, hospital, rest home, retirement home, group care home, school, dwelling unit (single family dwelling, duplex, triplex, multifamily dwelling, or mobile home), or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.

"Person" means any individual, firm, association, partnership, joint venture, or corporation.

"Plainly audible" means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties. unambiguously communicated to the listener. Plainly audible sounds include, but are not limited to understandable musical rhythms, understandable spoken words, and vocal sounds other than speech, which are distinguishable as raised or normal.

“Public right-of-way” means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a government entity.

"Public space" means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

"Residential area" means any real property which contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the City's zoning ordinance.

#### **9.52.0430 Noise disturbance prohibited. General Prohibition**

~~1. Generally. In addition to the specific prohibitions in subsection B of this section and Section 9.52.040, it is unlawful for any person to knowingly create, assist in creating, permit, continue, or permit the continuance of any noise disturbance. A noise disturbance is any sound, including sound produced by animals, which annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others, within the limits of the city.~~

1. No person shall make, continue, or cause to be made or continued:
  - a. any unreasonably loud or raucous noise; or

- b. any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City; or
  - c. any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.
2. Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:
- a. the proximity of the sound to sleeping facilities, whether residential or commercial;
  - b. the land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
  - c. the time of day or night the sound occurs;
  - d. the duration of the sound; and
  - e. whether the sound is recurrent, intermittent, or constant.

**9.52.050 Noises Prohibited**

The following acts are declared to be per se violations of this Ordinance. This enumeration does not constitute an exclusive list:

~~2. Specific Prohibitions. Unless exempted by Section 9.52.050, the following acts are declared to be noise disturbances within the meaning of subsection A of this section provided, however, that this enumeration shall not be deemed to be exclusive:~~

1. Dynamic braking devices (Jake Brakes). Using any dynamic braking device on any motor vehicle, except to avoid imminent danger to persons or property. A dynamic braking device is one used primarily on trucks and busses to convert a motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without using the wheel brakes.
2. Idling engines on motor vehicles. Operating for more than fifteen (15) consecutive minutes any idling engine in such a manner as to be plainly audible within any dwelling unit between the hours of 10:00 p.m. and 7:00 a.m.
3. Motor vehicle repair and testing. Repairing or testing any motor vehicle in such a manner as to be plainly audible within any dwelling unit between the hours of 10:00 p.m. and 7:00 a.m.
4. Lawn mowing equipment. Operating lawn-mowing equipment (to include powered landscaping tools/equipment) with a combustion engine between 10:00 p.m. and 7:00 a.m.
- 4.5. Sound producing, amplifying, or reproducing equipment. During day and night hours, no person shall ~~C~~ause~~i~~ng or permit~~t~~ing sound produced by a musical instrument, radio, television, phonograph, loudspeaker, or other similar equipment to be plainly audible within any dwelling unit other than the source.

~~6. Domestic power equipment. The day period does not apply to sounds produced by domestic power equipment. During night hours, operating domestic power equipment in such a manner as to be plainly audible within any dwelling unit other than the source.~~

~~5.—~~

~~7. Off-highway vehicles. Operating any self-propelling motor vehicle, designed for or capable of travel on or over natural terrain, including but not limited to motorcycles, mini-bikes, motor scooters, dune buggies, and jeeps, off a public right-of-way in such a manner that the sound level is plainly audible within any dwelling unit outside the boundary of the noise-producing property during day or night hours.~~

~~6-8. Auxiliary equipment on motor vehicles. Causing, allowing, permitting, or failing to control the operation of any auxiliary equipment on a motor vehicle or trailer for more than thirty (30) minutes when the sound level produced by such equipment is plainly audible within any dwelling unit outside the boundary of the noise-producing property during night hours. Auxiliary equipment means a mechanical device that is built in or attached to a motor vehicle or trailer, including, but not limited to, refrigeration units, compressors, compactors, chippers, power lifts, mixers, pumps, and blowers.~~

#### **9.52.040 Permissible sound levels.**

~~A.—Except as specifically provided elsewhere in this chapter, "day" hours are between 7:00 a.m. and 10:00 p.m. Monday through Friday; and 8:00 a.m. to 7:00 p.m. Saturday and Sunday.~~

~~Except as otherwise provided elsewhere in this chapter, "night" hours are between 10:00 p.m. and 7:00 a.m. Monday through Friday, and 7:00 p.m. and 8:00 a.m. Saturday and Sunday.~~

~~a. Sound producing, amplifying, or reproducing equipment. During day and night hours, no person shall cause or permit sound produced by a musical instrument, radio, television, phonograph, loudspeaker, or other similar equipment to be plainly audible within any dwelling unit other than the source.~~

~~b. Domestic power equipment. The day period does not apply to sounds produced by domestic power equipment.~~

~~c.—During night hours, no person shall operate domestic power equipment in such a manner as to be plainly audible within any dwelling unit other than the source.~~

~~d.c. Commercial construction. The day period does not apply to any sounds produced in commercial construction activity.~~

~~e.—Off highway vehicles. No person shall operate any self-propelling motor vehicle, designed for or capable of travel on or over natural terrain, including but not limited to motorcycles, mini-bikes, motor scooters, dune buggies, and jeeps, off a public right of way in such a manner that the sound level is plainly audible within any dwelling unit outside the boundary of the noise-producing property during day or night hours.~~

~~f. Auxiliary equipment on motor vehicles. No person shall cause, allow, permit, or fail to control the operation of any auxiliary equipment on a motor vehicle or trailer for more than thirty (30) minutes when the sound level produced by such equipment is plainly audible within any dwelling unit outside the boundary of the noise-producing property during night hours. Auxiliary equipment means a mechanical device that is built in or attached to a motor vehicle or trailer, including, but not limited to, refrigeration units, compressors, compactors, chippers, power lifts, mixers, pumps, and blowers.~~

#### **9.52.0650 Exemptions-**

~~Sounds caused by the following are exempt from the prohibitions set out in Section 9.52.050 and are in addition to the exemptions specifically set forth in Section 9.52.050: The following sounds are exempted from the provisions of this chapter:~~

1. Sounds made by work necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from imminent exposure to danger.
2. Sounds made by warning devices to protect persons or property from imminent exposure to danger, provided however that intrusion or fire alarms shall not sound continuously for more than fifteen (15) minutes. Sounds made by the Tualatin Valley fire and rescue district sirens during use and testing.
3. Sounds made by an emergency vehicle, as defined in ORS 801.260, when responding to or from an emergency or when in pursuit of an actual or suspected violator of the law.
4. Sounds made by activities by or on direction of the ~~city of Sherwood~~City in maintenance, construction, or repair of public improvements in public rights-of-way or easements.
5. Sounds produced pursuant to a specific variance granted by the Oregon environmental quality commission, or under Section 9.52.0870 of this chapter.
6. Sounds produced by the audience, participants, and sound amplifying equipment at athletic events on public property and sponsored or sanctioned or otherwise approved by the eCity or the Sherwood school district.
7. Sounds made by motor vehicle exhaust systems that comply with the provisions of ORS 815.250, but this exemption does not apply to violation of Section 9.52.0350-B (2) of this chapter.
- ~~7-8.~~ Commercial construction. The day period does not apply to any sounds produced in commercial construction activity.

#### **9.52.0670 Enforcement responsibility and authority-**

1. ~~The Sherwood police department and the city manager's designee shall jointly enforce this chapter. The following individuals shall enforce this chapter: The City Manager or Police Chief will have primary responsibility for the enforcement of the noise regulations contained in this chapter. Nothing in this chapter shall prevent the City~~

Manager or Police Chief from obtaining voluntary compliance by way of warning, notice, or education.

2. Enforcement of this chapter may include seizure of the sound producing equipment.

**9.52.0780 Variances.**

1. Generally. Any person who owns, controls, or operates any sound source which does not comply with a provision of this chapter may apply for:
  - a. A Class A variance for an event that does not exceed seventy-two (72) hours in duration; or
  - b. A Class B variance for an event or activity or series of related events, or activities that are seventy-two (72) hours or more in duration.
2. The eCity mManager ~~or the city manager's designee~~ may file application for a Class C variance for a community event or activity of any duration that does not comply with a provision of this chapter.

**9.52.0980 Variance application.**

1. An applicant for a variance shall submit in writing:
  - a. A reference to the provision from which the variance is sought;
  - b. The reason or reasons why the variance is necessary;
  - c. The physical characteristics of the involved sound;
  - d. The times when the involved sound will be emitted and the anticipated duration of the sound;
  - e. Where the sound will not be generated by a mobile source which moves beyond the boundaries of one block, a site plan sketch which shows the area of sound generation and designates whether the uses in the area within four hundred (400) feet of the source of the involved sound are commercial, industrial, or noise sensitive as defined in Section 9.52.0230, or a combination thereof;
  - f. Any other supporting information which the City mManager or council may reasonably require to allow consideration of the conditions set forth in Section 9.52.1010.
2. The applicant for a Class A variance shall submit the application to the eCity mManager ~~'s designee~~. The applicant for a Class B or Class C variance shall submit the application to the city recorder, who shall place the matter on the agenda for the forthcoming council meeting.

**9.52.1090 Public notification for Class B or C variance.**

The applicant for a Class B variance or the eCity for a Class C variance shall post notice along the nearest public road at the boundaries of the property containing the sound source so that the notice is visible from the public road, and publish notice in a newspaper of general

circulation in the eCity. Notice shall be posted on the property at least seven days before the public hearing, and notice shall be published at least four days before the public hearing. Notice under this sSection shall state the date the council will consider the application, the nature and substance of the variance to be considered, and that recipients of the notification may file written comments on the application with the city recorder before the council meeting at which the application will be considered.

#### **9.52.1010 Variance review.**

The eCity mManager ~~or the city manager's designee~~ or council may grant a variance, after considering the written application for variance and any written comments submitted by persons specified in [Section 9.52.09100](#), when it appears that the following conditions exist:

1. There are unnecessary or unreasonable hardships or practical difficulties which can be most effectively relieved by granting the variance, and;
2. That granting the application will not be unreasonably detrimental to the public welfare.

#### **9.52.1240 Variance decision**

1. The eCity mManager ~~or the city manager's designee~~ shall grant or deny a Class A variance within three days of receipt of a complete variance application, excluding Saturdays, Sundays, and holidays.
2. The council shall grant or deny a Class B or Class C variance within thirty (30) days of receipt of the application, and may, on its own motion, hold a public hearing on the application before deciding to grant or deny the variance.
3. The eCity mManager or council may impose such limitations, conditions, and safeguards as deemed appropriate, so that the spirit of this chapter will be observed, and the public safety and welfare secured. A violation of any such condition or limitation shall constitute a violation of this chapter.
4. A decision to grant or deny the variance shall be in writing and shall state the reasons for such decision. The council or eCity mManager shall notify the applicant of the decision and shall make it available to any person who has submitted written comments on the application.

#### **9.52.1320 Review.**

The decision of the council to grant or deny a variance is final. The eCity mManager shall file his or her written decision with the city recorder, who shall place the matter on the agenda for the forthcoming council meeting. The decision of the eCity mManager is final on the date of that council meeting, unless the council, on its own motion, decides to reverse or modify the decision of the eCity mManager or to schedule a public hearing on the application. If a public hearing is held, the council shall grant or deny the variance within thirty (30) days after the hearing, and may impose conditions on the granting of the variances as set forth in [Section 9.52.1240](#).

#### **9.52.1340 Penalties.**

1. Violation of any provision of this chapter constitutes a Class C violation ~~(City of Sherwood Municipal Code)~~ for the first offense. Subsequent violations of this chapter constitute a Class B violation ~~(City of Sherwood Municipal Code)~~.

4.2. Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.



**ORDINANCE 2016-005**

**AMENDING TITLE 9 OF THE MUNICIPAL CODE RELATING TO PUBLIC PEACE, MORALS AND WELFARE, CHAPTER 9.52 PROHIBITING OF NOISE; DECLARING AN EMERGENCY**

**WHEREAS**, loud and raucous noise degrades the environment of the City to a degree that is harmful to the health, welfare, and safety of its inhabitants and visitors; interferes with the comfortable enjoyment of life and property; interferes with the well-being, tranquility, and privacy of the home; and both causes and aggravates health problems; and

**WHEREAS**, both the effective control and the elimination of loud and raucous noise are essential to the health and welfare of the City's inhabitants and visitors, and to the conduct of the normal pursuits of life, including recreation, work, and communication; and

**WHEREAS**, the use of sound amplification equipment creates loud and raucous noise that may, in a particular manner and at a particular time and place, substantially and unreasonably invade the privacy, peace, and freedom of inhabitants of, and visitors to, the City; and

**WHEREAS**, certain short-term easing of noise restrictions is essential to allow the construction and maintenance of structures, infrastructure, and other elements necessary for the physical and commercial vitality of the City; and

**WHEREAS**, the obligation to draft regulations that affect speech in a content-neutral fashion is of paramount importance to protect the freedom of expression guaranteed by Article I, section 8, of the Oregon Constitution and the First Amendment of the United States Constitution; and this ordinance enacts narrowly drawn, content-neutral regulations that are to be interpreted as such so as not to infringe upon constitutionally protected rights; and

**WHEREAS**, the City wants to begin to bring its noise ordinance more closely into alignment with the League of Oregon Cities Model Noise Ordinance and to amend its noise ordinance to address developments in the law since its current noise ordinance was enacted in 2001; and

**WHEREAS**, this ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of Sherwood through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety; or causes public inconvenience, annoyance or alarm to reasonable persons of ordinary sensitivity.

**NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:**

**Section 1. Findings.**

After full and due consideration of the information presented, the Council finds that the text of the Sherwood Municipal Code relating to the prohibiting of noise in chapter 9.52 in the Public Peace, Morals and Welfare title shall be amended.

**Section 2. Approval.**

The proposed amendments for the Municipal Code identified in the attached Exhibit 1, are hereby **APPROVED** and replace the existing chapter 9.52 in its entirety.

**Section 3. Manager Authorized**

The City Manager is hereby directed and authorized to adopt rules and to take such other actions as may be necessary to implement this ordinance, including necessary updates to the Municipal Code.

**Section 4. Emergency**

This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect on the date of its passage.

**Duly passed by the City Council this 2<sup>nd</sup> day of February, 2016.**

\_\_\_\_\_  
Krisanna Clark, Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Brouse	_____	_____
Robinson	_____	_____
Kuiper	_____	_____
King	_____	_____
Henderson	_____	_____
Harris	_____	_____
Clark	_____	_____

## EXHIBIT 1

### 9.52 Prohibiting of Noise

#### 9.52.010 Purpose

This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of Sherwood through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety; or causes public inconvenience, annoyance or alarm to reasonable persons of ordinary sensitivity.

#### 9.52.020 Scope

This Ordinance applies to the control of all sound originating within the jurisdictional limits of the City.

#### 9.52.030 Definitions

As used in this chapter, unless the context requires otherwise:

“City” means the City of Sherwood.

“City Manager” means the City Manager of City or the City Manager's designee.

"Commercial" means any use of an office, service establishment, hotel, motel, retail store, park, amusement or recreation facility, or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.

"Day" hours are between 7:00 a.m. and 10:00 p.m. Monday through Friday and 8:00 a.m. to 7:00 p.m. Saturday and Sunday.

"Domestic power equipment" means power tools or equipment used for home or building repair, maintenance, alteration or other home manual arts projects, including but not limited to powered hand tools, lawn mowers and garden equipment.

“Emergency” means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.

“Emergency Work” means any work performed for the purpose of preventing or alleviating physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities when restoring utility service.

"Industrial" means any use of a warehouse, factory, mine, wholesale trade establishment, or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.

"Motor vehicle" means any land vehicle, which is designed to be self-propelled.

"Night" hours are between 10:00 p.m. and 7:00 a.m. Monday through Friday and 7:00 p.m. and 8:00 a.m. Saturday and Sunday

"Noise sensitive" means any use of a church, temple, synagogue, day care center, hospital, rest home, retirement home, group care home, school, dwelling unit (single family dwelling, duplex,

triplex, multifamily dwelling, or mobile home), or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.

"Person" means any individual, firm, association, partnership, joint venture, or corporation.

"Plainly audible" means any sound that can be detected by a reasonable person of ordinary sensitivities using his or her unaided hearing faculties.

"Public right-of-way" means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a government entity.

"Public space" means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

"Residential area" means any real property which contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally nonconforming, for residential use in accordance with the terms and maps of the City's zoning ordinance.

#### **9.52.040 General Prohibition**

1. No person shall make, continue, or cause to be made or continued:
  - a. any unreasonably loud or raucous noise; or
  - b. any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace, or safety of reasonable persons of ordinary sensitivity, within the jurisdictional limits of the City; or
  - c. any noise which is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the neighborhood from which said noises emanate, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such residences or places of business.
2. Factors for determining whether a sound is unreasonably loud and raucous include, but are not limited to, the following:
  - a. the proximity of the sound to sleeping facilities, whether residential or commercial;
  - b. the land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
  - c. the time of day or night the sound occurs;
  - d. the duration of the sound; and
  - e. whether the sound is recurrent, intermittent, or constant.

#### **9.52.050 Noises Prohibited**

The following acts are declared to be per se violations of this Ordinance. This enumeration does not constitute an exclusive list:

1. Dynamic braking devices (Jake Brakes). Using any dynamic braking device on any motor vehicle, except to avoid imminent danger to persons or property. A dynamic braking device is one used primarily on trucks and busses to convert a motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without using the wheel brakes.

2. Idling engines on motor vehicles. Operating for more than fifteen (15) consecutive minutes any idling engine in such a manner as to be plainly audible within any dwelling unit between the hours of 10:00 p.m. and 7:00 a.m.
3. Motor vehicle repair and testing. Repairing or testing any motor vehicle in such a manner as to be plainly audible within any dwelling unit between the hours of 10:00 p.m. and 7:00 a.m.
4. Lawn mowing equipment. Operating lawn-mowing equipment (to include powered landscaping tools/equipment) with a combustion engine between 10:00 p.m. and 7:00 a.m.
5. Sound producing, amplifying, or reproducing equipment. Causing or permitting sound produced by a musical instrument, radio, television, phonograph, loudspeaker, or other similar equipment to be plainly audible within any dwelling unit other than the source.
6. Domestic power equipment. During night hours, operating domestic power equipment in such a manner as to be plainly audible within any dwelling unit other than the source.
7. Off-highway vehicles. Operating any self-propelling motor vehicle, designed for or capable of travel on or over natural terrain, including but not limited to motorcycles, mini-bikes, motor scooters, dune buggies, and jeeps, off a public right-of-way in such a manner that the sound level is plainly audible within any dwelling unit outside the boundary of the noise-producing property during day or night hours.
8. Auxiliary equipment on motor vehicles. Causing, allowing, permitting, or failing to control the operation of any auxiliary equipment on a motor vehicle or trailer for more than thirty (30) minutes when the sound level produced by such equipment is plainly audible within any dwelling unit outside the boundary of the noise-producing property during night hours. Auxiliary equipment means a mechanical device that is built in or attached to a motor vehicle or trailer, including, but not limited to, refrigeration units, compressors, compactors, chippers, power lifts, mixers, pumps, and blowers.

#### **9.52.060 Exemptions**

Sounds caused by the following are exempt from the prohibitions set out in Section 9.52.050 and are in addition to the exemptions specifically set forth in Section 9.52.050:

1. Sounds made by work necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from imminent exposure to danger.
2. Sounds made by warning devices to protect persons or property from imminent exposure to danger, provided however that intrusion or fire alarms shall not sound continuously for more than fifteen (15) minutes. Sounds made by the Tualatin Valley fire and rescue district sirens during use and testing.
3. Sounds made by an emergency vehicle, as defined in ORS 801.260, when responding to or from an emergency or when in pursuit of an actual or suspected violator of the law.

4. Sounds made by activities by or on direction of the City in maintenance, construction, or repair of public improvements in public rights-of-way or easements.
5. Sounds produced pursuant to a specific variance granted by the Oregon environmental quality commission, or under [Section 9.52.080](#) of this chapter.
6. Sounds produced by the audience, participants, and sound amplifying equipment at athletic events on public property and sponsored or sanctioned or otherwise approved by the City or the Sherwood school district.
7. Sounds made by motor vehicle exhaust systems that comply with the provisions of ORS 815.250, but this exemption does not apply to violation of [Section 9.52.050\(2\)](#) of this chapter.
8. Commercial construction. The day period does not apply to any sounds produced in commercial construction activity.

#### **9.52.070 Enforcement responsibility and authority**

1. The following individuals shall enforce this chapter: The City Manager or Police Chief will have primary responsibility for the enforcement of the noise regulations contained in this chapter. Nothing in this chapter shall prevent the City Manager or Police Chief from obtaining voluntary compliance by way of warning, notice, or education.
2. Enforcement of this chapter may include seizure of the sound producing equipment.

#### **9.52.080 Variances**

1. Generally. Any person who owns, controls, or operates any sound source which does not comply with a provision of this chapter may apply for:
  - a. A Class A variance for an event that does not exceed seventy-two (72) hours in duration; or
  - b. A Class B variance for an event or activity or series of related events, or activities that are seventy-two (72) hours or more in duration.
2. The City Manager may file application for a Class C variance for a community event or activity of any duration that does not comply with a provision of this chapter.

#### **9.52.090 Variance application**

1. An applicant for a variance shall submit in writing:
  - a. A reference to the provision from which the variance is sought;
  - b. The reason or reasons why the variance is necessary;
  - c. The physical characteristics of the involved sound;
  - d. The times when the involved sound will be emitted and the anticipated duration of the sound;

- e. Where the sound will not be generated by a mobile source which moves beyond the boundaries of one block, a site plan sketch which shows the area of sound generation and designates whether the uses in the area within four hundred (400) feet of the source of the involved sound are commercial, industrial, or noise sensitive as defined in [Section 9.52.030](#), or a combination thereof;
  - f. Any other supporting information which the City Manager or council may reasonably require to allow consideration of the conditions set forth in [Section 9.52.110](#).
2. The applicant for a Class A variance shall submit the application to the City Manager. The applicant for a Class B or Class C variance shall submit the application to the city recorder, who shall place the matter on the agenda for the forthcoming council meeting.

**9.52.100 Public notification for Class B or C variance**

The applicant for a Class B variance or the City for a Class C variance shall post notice along the nearest public road at the boundaries of the property containing the sound source so that the notice is visible from the public road, and publish notice in a newspaper of general circulation in the City. Notice shall be posted on the property at least seven days before the public hearing, and notice shall be published at least four days before the public hearing. Notice under this Section shall state the date the council will consider the application, the nature and substance of the variance to be considered, and that recipients of the notification may file written comments on the application with the city recorder before the council meeting at which the application will be considered.

**9.52.110 Variance review**

The City Manager or council may grant a variance, after considering the written application for variance and any written comments submitted by persons specified in [Section 9.52.100](#), when it appears that the following conditions exist:

- 1. There are unnecessary or unreasonable hardships or practical difficulties which can be most effectively relieved by granting the variance, and;
- 2. That granting the application will not be unreasonably detrimental to the public welfare.

**9.52.120 Variance decision**

- 1. The City Manager shall grant or deny a Class A variance within three days of receipt of a complete variance application, excluding Saturdays, Sundays, and holidays.
- 2. The council shall grant or deny a Class B or Class C variance within thirty (30) days of receipt of the application, and may, on its own motion, hold a public hearing on the application before deciding to grant or deny the variance.
- 3. The City Manager or council may impose such limitations, conditions, and safeguards as deemed appropriate, so that the spirit of this chapter will be observed, and the public safety and welfare secured. A violation of any such condition or limitation shall constitute a violation of this chapter.

4. A decision to grant or deny the variance shall be in writing and shall state the reasons for such decision. The council or City Manager shall notify the applicant of the decision and shall make it available to any person who has submitted written comments on the application.

#### **9.52.130 Review**

The decision of the council to grant or deny a variance is final. The City Manager shall file his or her written decision with the city recorder, who shall place the matter on the agenda for the forthcoming council meeting. The decision of the City Manager is final on the date of that council meeting, unless the council, on its own motion, decides to reverse or modify the decision of the City Manager or to schedule a public hearing on the application. If a public hearing is held, the council shall grant or deny the variance within thirty (30) days after the hearing, and may impose conditions on the granting of the variances as set forth in [Section 9.52.120](#).

#### **9.52.140 Penalties**

1. Violation of any provision of this chapter constitutes a Class C violation for the first offense. Subsequent violations of this chapter constitute a Class B violation.
2. Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

Agenda Item: Public Hearing, *First Reading (Emergency)*

**TO:** Sherwood City Council

**FROM:** Josh Soper, City Attorney  
Through: Joseph Gall, ICMA-CM, City Manager

**SUBJECT:** **Ordinance 2016-006**, Amending Title 9 of the Municipal Code relating to Public Peace, Morals, and Welfare by adding a new chapter 9.64 relating to targeted residential picketing; declaring an emergency

---

**Issue:**

Shall the City Council approve an ordinance related to targeted residential picketing?

**Background:**

At the January 5, 2016 Council meeting, Council heard from a number of concerned citizens and others regarding recent incidents of targeted residential picketing (i.e. protests targeted at occupants of particular residences) in Sherwood. As staff briefly discussed at that time, one possible means of addressing this problem is through an ordinance that prohibits targeted residential picketing within certain parameters.

The attached ordinance is modeled on the ordinance that was upheld by the U.S. Supreme Court in *Frisby v. Schultz*, 487 U.S. 474 (1988), with additional care taken to address areas of concern that have been expressed by the U.S. Supreme Court and other courts when reviewing ordinances of this type. In addition, the attached ordinance closely tracks the ordinance provided as a model by the attorney for the family currently being subjected to targeted residential picketing in Sherwood.

The ordinance classifies violations as Class A, which is a \$1,000 fine, the highest penalty allowed under current City Code.

This ordinance includes an emergency clause to allow it to take effect immediately, after a single hearing. Approving the ordinance on an emergency basis requires unanimous approval by all seven members of Council. Otherwise, it can be amended to strike the emergency clause and be taken to a second hearing.

**Financial Impacts:**

No direct financial impacts are anticipated. Potential indirect impacts include the cost of prosecuting violations of the ordinance and perhaps defending the ordinance against a legal challenge.

**Recommendation:**

Staff respectfully recommends Council discuss and consider adoption of Ordinance 2016-006, Amending Title 9 of the Municipal Code relating to Public Peace, Morals, and Welfare by adding a new chapter 9.64 relating to targeted residential picketing; declaring an emergency.



**ORDINANCE 2016-006**

**AMENDING TITLE 9 OF THE MUNICIPAL CODE RELATING TO PUBLIC PEACE, MORALS AND WELFARE BY ADDING A NEW CHAPTER 9.64 RELATING TO TARGETED RESIDENTIAL PICKETING; DECLARING AN EMERGENCY**

**WHEREAS**, the public health and welfare and the good order of the community require that members of the community enjoy, in their homes and dwellings, a feeling of well-being, tranquility, and privacy and, when absent from their homes and dwellings, carry with them the sense of security inherent in the assurance that they may return to the enjoyment of their homes and dwellings; and

**WHEREAS**, picketing that is targeted at an occupant of a particular residence and which occurs before or about that residence causes emotional disturbance and distress to the occupants, creates a captive audience, is inherently and unreasonably offensive to and intrusive upon the right to privacy in the home, and obstructs and interferes with the free use of public sidewalks and public ways of travel; and

**WHEREAS**, such practice has as its object the harassing of such occupants and, without resort to such practice, full opportunity and ample alternative channels of communications exist, and under the terms and provisions of this ordinance, will continue to exist, for the exercise of freedom of speech and constitutional rights; and

**WHEREAS**, the above concerns necessitate the enactment of content-neutral, reasonable time, place, and manner restrictions upon such activities in order to reconcile and protect the rights of picketers to peacefully communicate and express their ideas and opinions with the rights of persons to feel safe and secure within their homes; and

**WHEREAS**, the United States Supreme Court has “repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom” *Frisby v. Schultz*, 487 U.S. 474 at 484 (1988); and

**WHEREAS**, existing law does not adequately protect the right to privacy in the home against targeted picketing, and the provisions hereinafter enacted are narrowly tailored and necessary for the public interest to avoid the detrimental results herein set forth;

**NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:**

**Section 1. Findings.**

After full and due consideration of the information presented, the Council finds that the text of the Sherwood Municipal Code shall be amended to add specific language to address targeted Ordinance 2016-006

February 2, 2016

Page 1 of 2, with Exhibit 1 (1 pg)

residential picketing, and the proposed amendments shall be added as chapter 9.64 in the Public Peace, Morals and Welfare title of the Municipal Code.

**Section 2. Approval.**

The proposed amendments for the Municipal Code identified in the attached Exhibit 1, are hereby **APPROVED**.

**Section 3. Manager Authorized**

The City Manager is hereby directed and authorized to adopt rules and to take such other actions as may be necessary to implement this ordinance, including necessary updates to the Municipal Code.

**Section 4. Emergency**

This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect on the date of its passage.

**Duly passed by the City Council this 2<sup>nd</sup> day of February, 2016.**

\_\_\_\_\_  
Krisanna Clark, Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Brouse	_____	_____
Robinson	_____	_____
Kuiper	_____	_____
King	_____	_____
Henderson	_____	_____
Harris	_____	_____
Clark	_____	_____

## EXHIBIT 1

### 9.64 Targeted Residential Picketing

#### 9.64.010 Definitions

As used in this chapter, unless the context requires otherwise:

1. "Picketing" means the posting of a person or group for a demonstration or protest.
2. "Targeted picketing" means picketing that is directed at an occupant of a particular residential dwelling and that is posted, or proceeds on a definite course or route, in front of or around that particular residential dwelling.
3. "Residential dwelling" means any permanent building being used by one or more occupants solely for nontransient residential uses.

#### 9.64.020 Targeted Residential Picketing

1. No person shall engage in targeted picketing activity before or about the residential dwelling occupied by the target of the picketing. This section does not and shall not be interpreted to bar picketing in a residential area that is not targeted at an occupant of a particular residential dwelling.
2. A violation of subsection (1) of this section is a class A violation. Each occurrence of a violation, or, in the case of continuous violations, each day a violation occurs or continues, constitutes a separate offense and may be punished separately.

#### 9.64.030 Private Cause of Action

1. Any person claiming to be aggrieved by a violation of Section 9.64.020(1) shall have a cause of action in any court of competent jurisdiction against any person violating said section. The cause of action may seek any and all appropriate relief, including injunctive relief. The court shall award reasonable attorney fees to the prevailing party.
2. The city shall have no liability for a person's attorney fees and costs incurred pursuing enforcement under this section. Any person electing to pursue its rights under subsection (1) of this section shall indemnify and hold the city harmless for any and all costs, damages, or liabilities incurred by the city arising as a result of the person's pursuit of an enforcement action.