



Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, October 7, 2014

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

6:00 pm URA Board of Directors Work Session

6:30 pm City Council Work Session

7:00 pm City Council Regular Meeting



Home of the Tualatin River National Wildlife Refuge

6:00 PM URA BOARD WORK SESSION

1. SURPAC recommendations, Sale of Assets, Project Priorities, Façade Grant Program

6:30 PM CITY COUNCIL WORK SESSION

1. Discussion Establishing Marijuana Tax

REGULAR CITY COUNCIL MEETING

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. APPROVAL OF AGENDA

5. CONSENT

- A. Approval of September 16, 2014 City Council Meeting Minutes

6. CITIZEN COMMENTS

7. PRESENTATIONS

- A. Eagle Scout Recognition

8. NEW BUSINESS

- A. Resolution 2014-063 Declaring Sherwood City Council Seat Vacant
(Joseph Gall, City Manager)

- B. Resolution 2014-064 Approve and ratify a successor Collective Bargaining Agreement and Letter of Agreement between the City of Sherwood and the Sherwood Police Officers Association (SPOA) and authorizing the City Manager to execute the agreements
(Tom Pessemier, Asst. City Manager)

- C. Resolution 2014-065 Authorizing the City Manager to sign a contract with Cogan Owens Cogan to concept plan the Urban Reserve areas west of the existing City of Sherwood Urban Growth Boundary (UGB) and conduct a city wide housing needs analysis
(Brad Kilby, Planning Manager)

AGENDA

**SHERWOOD CITY COUNCIL
October 7, 2014**

6:00 pm URA Board Work Session

6:30 pm City Council Work Session

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

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

9. PUBLIC HEARINGS

- A. Ordinance 2014-019 Establishing a tax on the sale of marijuana and marijuana infused products in the City of Sherwood and adding a new Chapter 3.25 to the Municipal Code**
(Joseph Gall, City Manager)

10. CITIZEN COMMENTS

11. CITY MANAGER REPORT

12. ADJOURN

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, by the Friday prior to a Council meeting. Council agendas are also posted at the Sherwood Library/City Hall, the 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 Sylvia Murphy, 503-625-4246 or murphys@sherwoodoregon.gov



SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
September 16, 2014

WORK SESSION

1. **CALL TO ORDER:** Mayor Middleton called the meeting to order at 6:32 pm.
2. **COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Robyn Folsom, Matt Langer and Krisanna Clark. Councilor Bill Butterfield arrived at 6:40 pm. Dave Grant was absent.
3. **STAFF PRESENT:** City Manager Joseph Gall, Community Services Director Kristen Switzer, Public Works Director Craig Sheldon, Administrative Assistant Colleen Resch and City Recorder Sylvia Murphy.
4. **TOPICS:**

City Manager Joseph Gall announced that Metro Councilor Craig Dirksen was running late and adjusted the agenda accordingly.

A. Filling of Council Vacancy Procedures

City Manager Gall informed the Council with the recent notification of Councilor Folsom moving outside the City limits he wanted to brief the Council on City Charter and Municipal Code provisions for filling a vacancy. He distributed a document (see record, Exhibit A) and explained.

B. Washington DC Trip Recap

Councilor Robyn Folsom and Community Services Director Kristen Switzer briefed the Council on a recent trip to Washington DC to meet with legislators regarding available funding for City projects, including the Community Center currently under construction. Councilor Folsom explained the effectiveness of the trip and the services and support provided by CFM and the return on the investment in the form of funds being brought into Sherwood for projects.

C. Metro Update

Metro Councilor Craig Dirksen provided the Council with a Metro update (see record, Exhibit B) and explained. Discussion followed.

5. ADJOURN:

Mayor Middleton adjourned the Work Session at 7:00 pm and convened to a Regular Session.

REGULAR SESSION

1. **CALL TO ORDER:** Mayor Middleton called the meeting to order at 7:05 pm.
2. **PLEDGE OF ALLEGIANCE:**
3. **COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Bill Butterfield, Robyn Folsom, Matt Langer and Krisanna Clark. Councilor Dave Grant was absent.
4. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Joseph Gall, Finance Director Julie Blums, Police Chief Jeff Groth, Public Works Director Craig Sheldon, Community Development Director Julia Hajduk, Community Services Director Kristen Switzer, Building Official Scott McKie, Administrative Assistant Colleen Resch, and City Recorder Sylvia Murphy. City Attorney Chris Crean.

Mayor Middleton addressed Approval of Agenda and stated the following motion.

5. APPROVAL OF AGENDA:

MOTION TO AMEND: FROM MAYOR MIDDLETON TO REMOVE ITEM 8.A. AS THE ACCOUNT HAS BEEN PAID.

In addition, the following motion was stated.

MOTION TO AMEND: FROM COUNCIL PRESIDENT HENDERSON TO AMEND UNDER ITEM 7, TO ADD A PRESENTATION FROM THE SHERWOOD POLICE FOUNDATION TONIGHT.

BOTH MOTIONS WERE SECONDED BY COUNCILOR FOLSOM, MOTIONS PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR GRANT WAS ABSENT).

Mayor Middleton stated the following motion.

MOTION: FROM MAYOR MIDDLETON TO APPROVE THE AMENDED AGENDA, SECONDED BY COUNCIL PRESIDENT HENDERSON, MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR GRANT WAS ABSENT).

Mayor Middleton addressed the next agenda item.

6. CONSENT AGENDA:

- A. Approval of August 19, 2014 City Council Meeting Minutes
- B. Resolution 2014-060 Appointing Charlotte Blair to the Cultural Arts Commission
- C. Resolution 2014-061 Appointing Angelisa Russo to the Cultural Arts Commission

MOTION: FROM COUNCIL PRESIDENT HENDERSON TO ADOPT THE CONSENT AGENDA, SECONDED BY COUNCILOR CLARK, MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR GRANT WAS ABSENT).

Mayor Middleton addressed the next item on the agenda.

7. CITIZEN COMMENTS

Ryan Howard, Newberg City Council President came forward and said he is a small business owner and is running for State Senator District 13. He said he became involved in local government to serve the community and would like to become involved at the state level to help local communities that are struggling to maintain basic services. He stated education is a strong issue. He said we need to refocus on our basic priorities with supporting small businesses and making sure our communities can meet their basic needs. He said he does not like the divisiveness he has seen in state government and would like to go there to meet with both side to find solutions to these issues. He said he is proud to have the support of conservative and liberal members of the Newberg City Council as well as the Chehalem Chamber of Commerce and asked the Council for their consideration in endorsing his race.

Dean Boswell, Sherwood resident approached the Council and asked what the Sherwood Police Foundation is and said those who seem to know say that it is a committee created by the Sherwood Chamber of Commerce. He said he did a Google search for the foundation and said they do not have a website or a Facebook page announcing who they are, who they are affiliated with, and who their members are or a mission statement stating their intentions. He stated the Sherwood Police Foundation is a private and secretive committee organized by a private organization and commented regarding the lack of public information on the organization. He said he is confused as to why Council President Henderson would refer to a private and secretive committee as a partner member and asked how the Police Foundation is a partner member to the City of Sherwood. He said he is confused as to when the City Council passed an ordinance that allows a private and secretive committee to share Council responsibilities and authority. He reminded the Council that the only authority they have is the authority that we the people of the City give you and you do not have the right to just take over and do what you want. He said we the people will and can vote you out of office if you continue down the road of dictatorship. He reminded the Council that the State of Oregon provides resources like the State Ethics Committee to investigate and prosecute government officials that break the law. He commented regarding the Declaration of Independence, the Constitution, its amendments and the Oregon State Constitution that lays out clearly the rights of the people. He recommended that the Council read through those documents and said it will give them a better insight on how to perform their jobs as Council members. He said if you chose to read these documents they are not open for interpretation like you seem to think they are, he provided the example of the Sherwood sign code. He said from what he can see the Sherwood Police Foundation is a committee that was created by the Sherwood Chamber of Commerce and stated he contacted the Chamber and has not received a response, he commented about not expecting a reply and made reference to Chamber President Keith Mays and Mr. Mays' lack of response to emails. He stated he knows this to be true because when he (Mays) was Mayor he emailed him on several occasions with concerns and received no response. He said what he sees is a committee made by the former Mayor in an effort to regain some control of the City. He said he is a believer that every thriving City needs a Chamber, however the Chamber is not part of the City government even though they work together, and the Chamber has no authority in City government. He said he has talked with businesses that are Chamber members and has heard two different trains of thought, one stating Keith Mays has done a lot of good things for the community and another stating there is an "inner circle" at the Chamber and gave examples of businesses not being invited to local events. He recommended to Council President Henderson to go back to the Sherwood Chamber of Commerce and tell them to do their job and service their members and stop trying to gain a foothold on the Sherwood City Council.

Robert James Claus, Sherwood resident came forward and said he is going to file a series of formal complaints with state agencies as he was requested to do when certain things occurred. He stated an officer from the Sheriff's Department came to his home and informed him that Councilor Butterfield and his wife made a complaint about him making a call and harassing them. He said he asked the officer if he had a complaint in writing and the answer was no. He said he told the officer that coming to his home with nothing in writing, and if the complaint is false it is a felony and asked him to leave and he said he would talk to his supervisors. He said it turned out that complaint was never signed and it was never signed because the phone call was never made. He commented regarding somebody trying to use their office to intimidate a citizen on public policy. He stated he has attended two sign meetings and in one the police came close to outnumbering the citizens. He referred to special prosecution and malice and filing complaints and not putting them in writing. He said the reason they won't put it in writing is explained by a sequence of happenings that Chief Groth will stand on this and he appreciates it and said they have enough in writing to make an issue. He stated signs are being seized by police and when they have made calls to get them back they couldn't get them back. He said then the meeting occurred and the "self help" threat occurred and it occurred whose signs they were taking and suggested it was certain members of Council who were not supportive of the Police Department and their budget. He said there have been honest criminal complaints filed against people that have not been followed up on. He said they were told they couldn't get the signs back and they told Mayor Middleton that they have never taken a sign. He asked Mayor Middleton to confirm that he was there.

Mayor Middleton said he attended the second meeting.

Mr. Claus asked him if that is the statement they made that they didn't take signs. He said they have it in writing that they took signs and won't give them back. He commented on intimidating people that don't support the gang of 5 and their current decisions. He said this has to go to some agencies to look at the criminal aspect. He commented regarding messages that they haven't taken signs and then they say another thing and then the City Manager writes a memo to get your signs and you can get them between 9 and 10 on Monday morning if somebody is at the Police Department. He commented on not separating the administration politically and the next election will show that. He said when you use the police he wants the state police to hear about it as they should know better than to waste our time.

Susan Claus, Sherwood resident approached the Council and commented on the sign code during election cycles. She said the code has been in place for a couple of years and she approached Councilor Henderson a year and a half ago about the need to change it and nothing happened. She commented on this election cycle when in early August there was another new interpretation of the sign code which came from the contracted City Attorney. She said the City Council is supposed to be the body that interprets code when there are problems and provided the example of when the City Recorder interpreted the code which made the recalls difficult. She stated they are allowing the City Attorney to make interpretations of the code and making it difficult for candidates. She commented on right-of-ways and confiscating signs and two sign code meetings and commented on the short election cycle and the number of candidates and some that are not well known and the need help to get information to the public. She said this is a problem that the Council was aware of before the election cycle and they chose not to address it and now we have surrogates making policy that is affecting our election at the local level. She state Community Development Director Julia Hajduk is also making policy and the Code Enforcement Officer is telling them that he just does what he is told as far as enforcement activities. She said the Planning Department is the one making some of the policy interpretations and Mr. Crean is making some other policy interpretations and then we have Councilor Langer making complaints on

particular signs. She referred to a new interpretation regarding one of their signs and said you can have a 4x8 sign. She said one of the code interpretations that has been allowed is we have commercial signs in town that are at angles and now the Code Enforcement Officer is saying the only way you can keep these two signs is to put them together or they will be confiscated. She said if that is the truth it needs to apply to all of the commercial property signs throughout town. She said the rules that are being made are directed at the political signs and it should be directed to all the signs in town. She said they have been issuing notices to members of our community that just want to express themselves and put a sign in their yard and they are being told that the signs are out of compliance and it is all under the threat of fines or other police activity because it is coming under the Police Department through the Code Enforcement Officer. She said this is a local election and it is being criminalized and they are making citizens fearful to have political signs. She referred to citizens getting letters in the mail regarding their signs and asked why the signs can't be different sizes and why are Mr. Crean or Ms. Hajduk making the interpretations that belong to the City Council. She asked why are the citizens and the candidates the ones getting the brunt of this and why does Councilor Langer who has taken it upon himself to make complaints about other signs when he doesn't follow the policy himself with his signs on barns.

Naomi Belov, Sherwood resident reminded residents to register to vote by October 14, 2014 and said registration can be done online. She said they have been doing voter outreach in Cannery Square. She commented on rumors about Councilors knocking over signs and said if there are complaints she wants the police to look at them as the signs are expensive and an expression of someone's support for a candidate. She said there have been no complaints about Henderson's signs being stolen or lost.

Councilor Henderson said that is not true.

Ms. Belov provided an example of a sign that was recently broken and said it needs to stop. She asked if Councilor Folsom is moving out of the city limits and if that is true what the process for filling the position is. She commented on the need to open the position to everybody who lives in Sherwood and follow the due process. She said another rumor she heard is there is a job opening at the art center for an arts administrator position and said if this is so she hopes they open it up to the nation and asked that consideration be given to all applications.

Mayor Middleton said the job opening is on the City website.

Ms. Belov asked if the job was even open or is there a listing.

City Manager Gall responded that the job opening is now closed and the City received 31 applications from all over the country.

Nancy Taylor, Sherwood resident came forward and stated she is a taxpayer, homeowner and now stalker. She reminded everyone to register to vote before October 14 and encouraged everyone to vote immediately as it is a good habit. She said Sherwood needs a change and she is happy that there are 3 positions open with 9 people running and said that shows that Sherwood has a lot of concerned people that feel change will be good. She reminded citizens not to write people in and said according to the state they won't qualify. She said please vote, please change and give Sherwood a fighting chance to be a better place to live.

Tim Voorhies approached the Council and read an article pertaining to the First Amendment and political speech and said it was a federal ruling. He read in 2010 the Supreme Court threw out a federal ban on

independent political speech by corporations, unions, associations and Citizens United vs. Federal Elections Commission and holding that this law was a ban on speech. He stated the Court noted that the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office thus speech must prevail against laws that would suppress it whether by design or by inadvertence. He said whether or not you make a law against it you can't do it. He said free speech is an essential mechanism of democracy because it is the means to hold officials accountable to the people. He stated it is our law and our tradition that more speech not less is the governing rule. He commented that is federal law and said that means he can have a 30 x 30 billboard on his property and as long as it was political speech you couldn't touch it. He gave examples and said he has checked with other cities and asked what is going on with this town. He noted it is the same every political year and referred to getting harassed by the police and receiving threatening letters. He said it has to stop. He commented on the form that you sign says "we shall not impugn" and said that means we can't question anything the Council does and we need to change this form to allow us to question in a public forum and get answers in a public forum instead of waiting for a response. He said he was told his sign was illegal because it was a "v" shape and referred to Mrs. Claus' comment of other properties with "v" shaped signs.

Tess Kies, Sherwood resident came forward and said it is hard to listen to people that are so ignorant about what they are talking about. She said there is a lot of concern about signs and she understands but encourages people to go past the sign problem and do your research on the candidates. She said if you did your research you would understand that the Police Foundation has nothing to do with the Chamber, and you would understand which candidates want to make our tax base worse than what it is and which do not, and which want to take the Y out of the City and which do not. She said and if you paid attention and did your research, signs would be the least of your concerns because they are not that important. She said they don't tell you anything about the person running for office. She said why should anybody who has worked for 15 years or works at all in City government be punished by saying we have had enough of them and want change. She encouraged people to be careful about what you are asking for because all of those changes are not necessarily good. She noted our Police Department is the 63rd in the nation for safety and 3rd in Oregon and there are people that want to change that and put it under a different entity. She said people are not paying attention to the issues. She said she supports Henderson and they have had just as many signs taken down, stolen and abused and said it not fair to do that to either party and we all have the right to vote for who we want. She referred to impugning ones character and said when people insinuate that someone on Council is trashing signs she disagrees with that and stated all the Councilors have better things to do and have more integrity than that.

Renee Brouse, Sherwood resident approached the Council as a representative of the Sherwood Chamber of Commerce to give clarification to Mr. Boswell's comments. She stated the Chamber of Commerce supports all businesses in Sherwood and is not one person and is made up of a board of people who are volunteers in the community, not just Keith Mays. She noted the Chamber has an RFP process for events and it is a process that is followed diligently. She said although the Chamber supports the Police Foundation it is not an affiliate of the Chamber, it is a separate entity doing great work by supporting our police.

Mayor Middleton addressed the next agenda item.

8. PRESENTATIONS

A. Proclamation, National Constitution Week

Mayor Middleton read the proclamation and proclaimed the week of September 17-23, 2014 as National Constitution Week. He stated the anniversary of the signing of the Constitution provides a historic opportunity for all Americans to realize the achievements of all the Framers of the Constitution and the rights, privileges and responsibilities it affords and the independence guarantees to American citizens, whether by birth or naturalization, should be celebrated by appropriate ceremonies and activities during Constitution Week.

B. Sherwood Police Foundation

Michael Tinney and Laurie Zwingli from the Sherwood Police Foundation approached the Council and thanked them for the opportunity to introduce the Sherwood Police Foundation and the board. Mr. Tinney said the mission of the foundation is to strengthen and promote community support for the Sherwood Police Department. He said the vision of the foundation is to promote the highest level of public safety and security by ensuring that the Sherwood Police possess the necessary tools, resources, training and programs to effectively and safely serve our community and create community partnerships that encourage citizen participation and enhancing the community of Sherwood. He said the organizing committee formed in early 2013 with members including Bank Vice President Tim Heine, Attorney Laurie Zwingli, Retired Police Chief Ray Shipley, Graphic Artist Kendra Kurtz, Retired Communication Consultant Jim Haynes and himself, Investment Advisory Michael Tinney. He said City Manager Joe Gall and Police Chief Groth serve as advisory liaisons. He said to validate their ideas members met with individuals, community leaders, and business leaders within the Salem Police Foundation Board and reviewed foundation bylaws and other information from throughout the country. He said this summer the newly formed foundation received its 501(c)3 nonprofit tax designation and now have a working Board of Directors, bylaws modeled after several successful local police foundations and the legal and tax designations to request funds and distribute them in ways supporting the Sherwood officers. He stated the function is to provide support that may not typically be included within the municipal budget. He provided examples of funding the youth substance abuse prevention programs, citizen appreciation and other public outreach. He said the actions will be guided by input from the officers and citizens. He noted this year the foundation was able to host the Annual Officer Recognition Dinner at Bella Via with over 60 officers and their spouses and community leaders. He said the foundation also provided the Sherwood Police Department with 10 AR 15 rifles, a Canine Officer including all of the associated costs, police ballistic shields, and automated external defibrillator for police vehicles.

He said to continue the spirit of giving the foundation will present a unique gift of personal safety to police canine Irma. He asked Officer Jentzsch and Irma to come forward and said thanks to donations made to the foundation they are able to outfit Officer Irma with equipment similar to her human team members. He presented Officer Jentzsch and Irma with a ballistic canine vest.

Council President Henderson thanked Mr. Tinney for acknowledging our Police Department and said it is fitting to call Irma an officer. She referred to comments about lack of information on the internet and said she assumes that is due to just getting the 501(c)3 status and that now allows you to start advertising and promoting the foundation. Mr. Tinney replied that is correct.

Councilor Henderson asked if the foundation supplied the money to purchase Irma and train her. Mr. Tinney said yes, in the spirit of the foundation prior members before the 501(c)3 provided those funds.

Councilor Henderson asked if the vest was an addition way of protecting that asset. Mr. Tinney said yes.

Councilor Henderson noted that now they are a 501(c)3 with bylaws and a Board of Directors they will now be able to do more outreach in the community and become more well known. She commented on Mr. Boswell's remark that they are a secret organization and said it is not a secret that we have a K-9 unit and that unit came from the spirit of supporting the police and that is what the foundation is about, not a secret organization of the Chamber. She said as a citizen she is grateful that there are people that want to support our police in ways that we can't due to budget constraints. She asked to hear more about the K-9 unit and how the vest will contribute to Irma's safety and longevity.

Mr. Tinney said there is nothing secret about what they do and stated they hesitated going out to the public and becoming known before the 501(c)3 status.

Councilor Folsom said Irma has become an asset to our department and the county and said we have Irma because of the Police Foundation. She said she is grateful and would like the public to hear some of what Irma has done over the past two years.

Officer Jentzsch said Irma is now cross trained to track humans and also finds the odors of drugs. He provided an example of a DUI crash where the driver fled on foot and Irma was able to track the suspect. He said recently outside of Sherwood there was a lost autistic child and they used Irma to help find the child.

Councilor Folsom asked if they are working the School District now that she is cross trained. Chief Groth said that is in the process. Councilor Folsom thanked them for making the community safer.

Mayor Middleton indicated he had another presentation and stated he would address it during Council Announcements.

Mayor Middleton addressed the next agenda item.

9. PUBLIC HEARINGS

A. Ordinance 2014-017 Amending Section 15.04.110 of the Sherwood Municipal Code adopting the 2014 Oregon Mechanical Specialty Code based on the 2012 International Building Code

Building Official Scott McKie approached the Council and said the State of Oregon building codes are periodically updated by the Oregon Building Code Division. He said local jurisdictions are also required to adopt the updates locally. He said the ordinance would amend the municipal code to stay current with the state approved code which is the current 2014 Oregon Mechanical Specialty Code.

Mayor Middleton asked for Council questions, with none received he opened the public hearing.

With no testimony received, he closed the public hearing.

With no questions from the Council the following motion was received.

MOTION: FROM COUNCIL PRESIDENT HENDERSON TO READ CAPTION AND ADOPT ORDINANCE 2014-017, SECONDED BY COUNCILOR FOLSOM, MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR GRANT WAS ABSENT).

Mayor Middleton addressed the next agenda item.

B. Ordinance 2014-018 Amending Section 15.04.110 of the Sherwood Municipal Code adopting the 2014 Oregon Structural Specialty Code based on the 2012 International Building Code

Building Official Scott McKie said this is the same explanation as the mechanical code and this is the building code which is also the Oregon Structural Specialty Code.

Mayor Middleton opened the public hearing. With no public coming forward he closed the public hearing.

Mayor Middleton asked for Council questions. With no questions from the Council the following motion was received.

MOTION: FROM COUNCIL PRESIDENT HENDERSON TO READ CAPTION AND ADOPT ORDINANCE 2014-018, SECONDED BY COUNCILOR CLARK, MOTION PASSED 6:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR GRANT WAS ABSENT).

Mayor Middleton addressed the next agenda item.

10. CITIZEN COMMENT

With no citizens coming forward Mayor Middleton addressed the next agenda item.

11. CITY MANAGER REPORT

City Manager Gall asked staff to address the sign code questions that were raised.

Community Development Director Julia Hajduk said there is nothing to update on the sign code. She said they have had informational meetings and a FAQ document was prepared before the first sign code meeting and has been updated with additional questions. She said they had the second meeting last week and received additional questions and those were added to the FAQ document and it will be posted on the City website tomorrow. She clarified there has been no change to the interpretation just clarifying the enforcement provisions. She stated the code does authorize for the City to remove and dispose of signs in right-of-ways. She said based on input at the meetings, as well as conversations with staff and legal counsel, they have determine that it would be appropriate to have some time available for people to come in and pick up the signs that were removed from the right-of-way. She said the time available to pick up signs is Monday mornings between 9 and 10.

Mayor Middleton said he appreciated all the work and setting time aside to pick up signs.

Mr. Gall said this is his second election cycle and it appears that people are abiding by the rules. He stated there has been damage to signs and that is unfortunate. He said we will see a strong campaign season. He commented regarding the frustration regarding enforcement and said we can learn and do a better job. He said the next Council will probably revisit the sign code.

Councilor Langer noted that all the people that complained about the sign code earlier have already left and asked if there was a way to get the message to them.

Mr. Gall responded that they are trying to communicate with each of the campaigns and we have eleven local candidates, and we are relying on the candidates to communicate the information to their volunteers. He said the campaigns are doing a good job of putting the signs up on the weekends and taking them down at the proper time. He noted it is an emotional time and there is passion in this community for campaigns.

Council President Henderson referred to comments comparing 4x8 political signs to commercial signs and asked if 4x8 commercial signs are temporary and is that allowed in a commercial zone. Julia Hajduk said they would be considered temporary signs and would have to comply with the temporary sign code and said she is not familiar with the particular complaints.

Councilor Henderson said some of the confusion is between a commercial permanent sign that goes through a planning process as either a sign permit or a development permit, as opposed to a temporary sign that might advertise a special promotion or a political sign, and the difference between how the City regulates those signs as far as height, distance and material type versus the temporary or portable signs that are used in political campaigns, garage sales or real estate signs.

Julia said a permanent freestanding sign in a commercial development is different than what we refer to as a temporary sign, and commercial real estate signs are considered temporary.

Councilor Henderson said if you compare a political temporary sign to a permanent commercial sign the signs are in different categories and are regulated differently.

City Attorney Chris Crean clarified that the City sign code differentiates between zones and you may drive through a commercial zone and see a 4x8 sign and decide to put one up on your house only to discover the sign code has different standards for signs in residential zones. He said the sign code is different based on what zone you are in, but within those zones every property is dealt with the same and every sign is dealt with the same. He said the people that come out most strenuously when the cities revise their sign codes are the realtors. He said the sign code standards in residential zones are designed in part to accommodate those signs but it just says you can have a sign on a property where the house or property is for sale without regard to what the sign says and the assumption is it will be a for sale sign. He said the time, place and manner restrictions apply to every property within the zone according to the standard for that zone and the standards will vary from zone to zone.

Councilor Langer referred to the pamphlet made a few years ago regarding the sign code and asked Julia if they are readily available.

Julia said they are available and she will make sure there is stock at City Hall and out in the community. She said she thought the information was clear but they now are providing the FAQ document. She clarified that this does not change anything it just says this is what this means so there is no confusion. She stated that everyone tries to comply with the rules but everyone understands the rules differently and that is what they are working on.

Councilor Henderson asked if signs of any nature are allowed in a round-about.

Julia said no, the idea is that a round-about is a moving intersection and if you are distracted by a sign it could be the difference between life and death. She said they have determined that signs have to be at least 50 feet from the pedestrian crossing in a round-about. She referred to diagrams that are on the City

website and will be attached to the FAQ and allows you to see where the signs need to be placed to make sure that we don't cause safety issues for pedestrians.

Councilor Henderson asked if each candidate was able to attend a sign code meeting.

Julia said they did not keep track of who attended. She said there were two meetings over a three week period.

Mayor Middleton addressed the next agenda item.

12. COUNCIL ANNOUNCEMENTS

Councilor Folsom announced that she is moving outside the city limits and said it is not great timing and would like to continue to serve but must follow the rules. She stated she will step down at the end of the month. She asked Kristen Switzer to come forward to offer clarity to some of the citizen's comments and explain the process for recruitment of the new Cultural Arts Center Manager.

Community Service Director Kristen Switzer said they advertised on the City website and the position was open for 2 weeks. She said they also used the National Recreation and Parks Association website and the Regional Arts and Culture Council to advertise.

Councilor Folsom commented on her involvement and asked Kristen whether she looked over the job description or was part of the process and if she knew during that 2 week time it was happening and if she applied for the job herself. Kristen said no.

Councilor Folsom said she was informed by City Manager Gall that citizens have called and were concerned that she is moving outside of the City limits to take that job. She confirmed with Mr. Gall that she could work for the City without having to move outside the City limits. Mr. Gall replied, that was correct.

Councilor Folsom clarified that if she wanted to seek employment she could have stepped down from Council and not have to move after 18 years. Mr. Gall said that is correct. She said she has supported the Cultural Center over the past 15 years but it was never a means to employment. She stated she is excited about the Community Center and with a pool of 31 applicants she is sure they will find someone more qualified than her.

Kristen noted that they have a pool of 31 candidates from all over the country as far away as New York.

Councilor Folsom thanked Kristen and stated she wanted it to be clear that she is not seeking employment. She announced that the Sherwood High School has hired her to take over the Drama Department and she is excited. She commented on her 6 years of service and said there are too many highlights to list. She referred to the last year and a half and said there has been a lot of focus on what has failed. She said because of the First Amendment, as Mr. Voorhies stated, as a Council we have allowed people to have that right. She said this is a good time to focus on the great things that have happened in our community. She referred to the Stella Olsen Park amphitheater and the bathrooms at Stella Olsen Park. She said the tennis courts on top of the water reservoir were such a unique and creative plan and use of space that is was featured on the front cover of a national parks and recreation magazine and said that is all due to the staff. She stated Sherwood has received millions in MSTIP

funding to help with road projects and said we received these dollars because staff was prepared and ready for projects. She said about \$37.5 million in a 5 year cycle was awarded to Sherwood for road projects. She noted we received a \$200,000 Brownfields grant to study how to clean up the old tannery site. She said that happened because Council President Henderson and Assistant City Manager Tom Pessemier went to Washington DC last year and said we were unsuccessful in our grant with EPA and asked how we could be successful and the EPA provided information. She gave the information to staff and they were successful in receiving a grant. She said they built the Cannery Plaza and the Cultural Center is on its way to being completed. She stated it didn't work the way we thought it would in 2001 and there were disappointments but noted the Urban Renewal District worked and it is happening and what a difference a few years made. She thanked the Charter Review Committee for their hard work.

She said as a member of Council she is proudest of the Budget Committee process. She said when she took office in FY 2009 there was a 9% general fund contingency and we now have a 26% contingency and that is the hard work of the Budget Committee and Finance Director Julie Blums. She commented on misleading budget information in the Gazette that said we had a 17% increase in spending and she clarified that moving into FY 2015 the adopted general fund budget is estimated to increase approximately only 12% and 11% of the increase is due to the funding of asset maintenance and one time expenditures that will increase efficiency within the City. She stated the reason the Budget Committee was able to make that 11% increase is because the year before we had saving of almost \$1.1 million and the Budget Committee decided that rather than increase spending and create programs that weren't sustainable over the long term they were going to focus on one time expenditures that we could do to support the assets within the community which had been neglected and noted there was a lot of building over the last decade but not a lot of thought about the sustainability and maintenance and that has been the topic of conversation over the last 4 years. She said only 1% of the 12% increase went into personnel costs. She noted they are adding planners because development is increasing and they have added a Cultural Center Director.

She referred to comments of making a change and getting Sherwood back to being a good place to live and stated that Sherwood has been ranked as a top 10 community in the nation multiple times over the last decade. She noted the Police Department was recognized as Sherwood being the 3rd safest community in Oregon and she thanked Chief Groth. She thanked the staff and said the Council is the policy makers and does only about 10% of what makes the community great and it is the staff that does the rest. She thanked City Recorder Sylvia Murphy for her education on process and said Sylvia has made her a better citizen. She commented regarding Mr. Crean stating that she has brought humanity to the process and noted how much she has learned from him and thanked him.

She stated the last year and a half has not been easy and it has defined her character. She commented on the accusations she has faced and said that is part of the process when you serve. She noted that it is passionate people being involved in their government. She said she is grateful for the other members of Council and commented on accusations of being the "rubber stamp five" and she said that speaks to what democracy is about because people of differing backgrounds who didn't know each other can come to a consensus and move the work of the City forward and she is grateful to have learned that from her fellow Councilors. She said she is a panelist for the NEA for their theatre grants program and will stay actively involved in the community.

Councilor Butterfield thanked Councilor Folsom for serving and commented on how Councilor Folsom and Council President Henderson have helped him understand why the minutia is important. He said he votes, thinks and acts on a common sense basis and he leaves the feeling part to Councilor Folsom. He

said Councilor Henderson has been an inspiration and is very intelligent and knows the City and said he will support her. He referred to Councilor Clark and said he doesn't know her that well and can't say she is not a bad choice. He commented on the situation with Councilor Langer and stated he did not know Councilor Langer before he was on the City Council. He said all the stories about them working together in past and stealing money from the City are not true. He referred to working with Councilor Grant and the ideas they have shared. He commented on the opportunity to get to know Mayor Middleton with a few discussions and meetings and the realization they would not be thinking on the same line. He concluded that we are all people and we think, cry and have feelings and get angry and sometimes he leaves these meetings and is angry because he cannot respond to some of these things. He said sometimes he would rather ignore things than deal with them and said in the case with Mr. Claus he could not ignore it and had to do something about it. He said Council is a place he feels he needs to be and he is going to run again so there can be some common sense.

Councilor Langer announced the Chamber of Commerce is having a voter's forum open to all candidates and the public from 6:30 - 8:30 pm on Tuesday September 30 at the High School Commons. He said the Chamber Golf Tournament is Thursday September 25 at Meriwether Golf Club. He noted the Onion Festival is Saturday October 11 from 9 am - 4 pm at Archer Glen. He announced the YMCA has the new floor installed upstairs and the steps are almost complete and the new session started on September 15. He said Zumba Fest is October 3 and Harvest Fest is Saturday October 24 from 4 - 6 pm. He said there will be a Haunted Teen Center on October 23 and 24 from 7 - 9 pm. He stated there is a 12 hour walk/run for kids on November 1 from 6:30 am - 6:30 pm. He said the YMCA Executive Director Renee Brouse has been asked to present the Brian Grant Powering Forward at the YMCA National Conference in February and this will bring national attention to this program.

Council Langer said normally he does not respond but referred to the sign complaints and said over the last year and a half he has dealt with all kinds of attacks and accusations and said there have been 6 ethics violations filed against him and there was nothing there. He said he continues to be harassed and he leaves it alone as much as possible. He commented regarding Nancy Taylor's mention of her being a stalker and he explained that she came to his house and stood on the edge of the lawn and stared in the window at his 12 year old daughter and took pictures of her. He said his daughter took pictures of Nancy Taylor taking pictures of her and then Ms. Taylor proceeded to take pictures of the house and the sign. He said she could have done this from across the street if it was about the sign code. He noted she was there to intimidate him and provided examples of signs such as "No Walmart" being placed in his yard and across the street over the last year and a half. He said this has gotten out of hand and it is time that the public know the truth of the harassment and ridiculous stuff that is going on. He said Ms. Taylor scared his daughter so they called the Police Department and filed a complaint. He commented on accusations that he is not following the sign code and said that particular sign has been stolen 4 times off of his lawn. He said this last time he put the sign in his yard and carefully zip tied it to his fence and cut the backs of the zip ties off so you couldn't tell unless you tried to steal it for the 5th time. He noted that is when a complaint was made with Officer Collins. He said the zip ties have now been removed. He commented on remarks that the only signs being stolen are Clark signs and this is not true, and he personally has had a total of 12 signs stolen and has found signs that were stolen from his yard placed in right-of-ways after Monday morning and then reported to Officer Collins. He referred to lies, accusations and conspiracies that have no foundation and if they had been true he would have been recalled and noted that the recall attempt only received 5% of the signatures that were needed because there are people in the City that know the truth and reality and the vocal minority did not get a lot of traction and that says a lot for our community. He commented on the community being in the top 10 standing for communities to live in for the last decade and now our Police are recognized for being the 3rd safest City

in the state while two members of Council are trying to disrespect the Sherwood Police Foundation. He said the majority of the Council never intended to show any sign of disrespect by not putting them on the agenda. He addressed the Sherwood Police Foundation and said the majority of the Council tried to have the presentation put on the agenda and finally amended the agenda tonight to include the presentation and he understands their concerns of disrespect and assured them it was not by a majority of the Council. He commented on references to the “rubber stamp five” and said Mayor Middleton used the term in the Gazette.

Mayor Middleton asked Councilor Langer to get to the point and said this is not a dissertation. Councilor Langer replied he took his chance in the Gazette to accuse them of being the “rubber stamp five”.

Mayor Middleton said this is not the location to do this.

Councilor Folsom called for a point of order and said this is okay.

Councilor Langer commented on a dictatorship and trying to quiet everyone down. Mayor Middleton said he is trying to keep some sort of order.

Councilor Langer commented on the Mayor bashing him in the Gazette and at the dais and letting people insult him at Council meetings and never saying a thing and the minute one person on Facebook calls the Mayor a thug he makes that the reason why the Sherwood Police Foundation can't get on the agenda. He said he had about 100 people insulting him and he takes one comment and won't let the Sherwood Police Foundation, who provided 10 AR 15's....

Mayor Middleton said which they don't need.

Councilor Langer continued and stated they got us Irma, ballistic shields, defibrillators and now a bullet proof vest for Irma. He thanked the Sherwood Police Foundation and said it means a lot to him and the entire community. He thanked Councilor Folsom and said she has been an inspiration and he has learned so much from her and he wished she could finish her remaining two years of her term as she has done many great things for the community, particularly the Cultural Arts Center. He said it has been a pleasure working with her and Councilor Henderson on a variety of topics.

Councilor Clark said we almost made it without having an argument and she was hoping for Councilor Folsom's sake they would make it. She said she has enjoyed working with Councilor Folsom and appreciates her service and she will be missed. She noted we were almost there and then Councilor's had to take their privilege and campaign and run other people down. She stated she does not have the power to put things on the agenda or stop them so putting her in the same category as the Mayor is Councilor Langer's way of doing the opposite of the “bully five”. She stated she does not understand why we need to run each other down, and would like to get through a Council meeting and talk about the wonderful things that are happening in Sherwood.

She said she is disappointed in all of the sign drama and she does not have a negative visceral reaction when she sees a Henderson sign and she thinks it is awesome to have two great candidates willing to step up to an unpaid volunteer position. She stated it would be great if we could all cheer for our side, whichever side that may be and coming out in the end feeling great about Sherwood.

She said she would not campaign because it would be wrong to take her position and use it. She said she would love to hear some “yeah Sherwood” and said she enjoyed hearing from the Sherwood Police Foundation.

Councilor Clark announced Sherwood had their first Bowmen football game and barely lost an exciting game. She said it was a real celebration and congratulated the team. She reported on the last SURPAC meeting and said it is transitioning into a different phase and she thanked those who served on SURPAC and said it has been a great Board to be a liaison too. She said she was invited to an employer appreciation day by Major Lisa Scott at the Air Force Reserve and said it was a privilege and shared her experience and thanked Major Scott for the invitation. She said she attended the dog park open house along with Councilor Butterfield and Mayor Middleton and said they received lots of support and input from the public. She said the owners of Nature’s Pet have offered to sponsor the doggy waste stations and want to get involved and make a donation to the City. She said the dog park is wanted and needed and will be greatly appreciated in Sherwood. She commented on the Willamette Water Supply meeting where they announced an open house for the public at Al’s Garden Center on November 15 from 10 am to noon. She encouraged people to attend if they want to have some input on the water system.

Councilor Henderson noted that it not our water system it is TVWD plant.

Councilor Clark said yes but we hook into it and it is an important part. Councilor Henderson said yes but not our water system.

Councilor Clark announced the Main Street meeting is Thursday at 4 pm at the Rebekah lodge.

Mayor Middleton asked if the agenda was online. Councilor Clark responded yes.

Council President Henderson said she attended the Cultural Arts Commission meeting in Councilor Folsom’s absence and they have two new members. She said the commission discussed the grand opening for the Cultural Arts Center and the many details of that event. She encouraged people that are interested in volunteering to come to the next Cultural Arts Commission meeting and said they meet on Mondays at 6:30 pm. She said the Library Board, which meets every other month, is in the process of interviewing for a new High School representative which is an important part of the Board as the High School does not have true Librarians and students often come to the public library for services. She said they have two candidates so far and will be setting up interviews.

Councilor Henderson stated she had a question that has come up in conversations she has had with staff and Councilor Folsom that Mayor Middleton is interested in exploring an option of moving our police services from local to contracting with Washington County. She said Council has not had that conversation about whether that is a route they want to take and how it would affect the budget and level of service. She said if that is a route the Council wants to take they would do it as a body and not as an individual. She asked if given the status of our Police Department and the accolades for the system we have in place and for being named the 3rd lowest crime rate in the State, whether other members of Council are interested in exploring that opportunity which would involve staff time, resources and money. She said she is not in favor of pursuing that but is open to the other views of Council. She asked for a straw poll to determine if we want to expend time, money and resources looking into this for the new fiscal year and potentially the new Council.

Councilor Butterfield responded if it isn't broken don't fix it. He said he does not see any need to go outside and we have a system here and our Police Chief takes care of the City and he is backing the Chief.

Councilor Folsom referred to an email the Council received from former Mayor Cottle who indicated his surprise that Mayor Middleton was discussing this issue because as the Police Chief he was adamantly opposed to the idea for many reasons and he had expressed concerns to the Council. She said she spoke with former City Manager Ross Schultz about this issue and he said on two occasions in the near decade when he was the City Manager and CFO they explored that option and found for budgetary purposes that it fiscally did not make sense, and at the time Chief Middleton had expressed concern about the loss of contact with the community. She said given the great department that we have she is against pursuing any staff time or expenditure on this.

Councilor Langer responded if you are asking if I am interested in spending tax payers' dollars to figure out if we should terminate the Sherwood Police Department and replace it with services from Washington County his answer is no don't waste the money.

Councilor Clark responded that she could not possibly have enough information on a surprise question and she deferred to hearing more about it.

Councilor Henderson said this is just straw poll. Councilor Clark said she had no comment.

Councilor Henderson clarified that she had no comment for or against. Councilor Clark said correct.

Councilor Henderson asked if that was her final comment. Councilor Clark said yes.

Mayor Middleton said they did look at contracting and almost went with a contract. He stated Mayor Cottle and Ross Schultz are not factually telling the whole story and said that is something we are looking into as a budget item.

Councilor Henderson said "we".

Mayor Middleton said this does not have to be the Council and said that citizens are allowed to look into anything they want and can even put it out for an advisory vote. He commented that this is a political thing right now and he can state his reasons later. He said he spoke with the Chief at one time when they said they needed so many new officers and he said they may have to contract out some day and the Chief said yes we may and that was in a long context of a different conversation. He said he does not think this was the place to bring it up and noted it is election time.

Mayor Middleton reported that the Planning Commission had a work session regarding the Westside Concept Plan and said it is a huge area that may someday be brought into the City and we have to plan now. He commented on the earlier work session with a Metro Councilor and said this is a big issue and Sherwood needs to decide if they want rapid growth or controlled growth and said they need to look at the infrastructure.

Mayor Middleton said he had a presentation for Councilor Clark and it involves the Police Department and stated we are heavily involved in the Special Olympics and he asked Chief Groth to comment.

Chief Groth said the biggest event is Tip-a-Cop and he stated they added a second event this year at Rose's. He stated for several years they have participated in the Law Enforcement Torch Run. He said most recently they participated in the Polar Plunge. He stated the Special Olympics is the charity the Police Department supports.

Mayor Middleton presented Councilor Clark with a plaque from the Special Olympics for participating in the Bocce Ball Cup event.

Councilor Clark commented on bringing the torch in and said it is a great event with the Olympians and we are lucky to have had the event in Newberg.

Mayor Middleton referred to the number of projects being worked on and said we don't need to politicize the Council and it was an embarrassment but we will move on from there.

13. ADJOURN

Mayor Middleton adjourned the meeting at 8:55 pm.

Submitted by:

Sylvia Murphy, MMC, City Recorder

Bill Middleton, Mayor

TO: Sherwood City Council

FROM: Joseph Gall, ICMA-CM, City Manager

Through: Sylvia Murphy, City Recorder

SUBJECT: Resolution 2014-063, Declaring Sherwood City Council Seat Vacant

Issue:

Should the City Council declare a vacancy on the Sherwood City Council?

Background:

At the last regular meeting of the Sherwood City Council held on September 16, 2014, City Councilor Robyn Folsom announced her resignation from Sherwood City Council effective September 30, 2014. The reason for her resignation was her impending relocation of residence outside of the city limits of Sherwood. As a result of her resignation and pursuant to Section 31 of the City Charter, the City Council is required to declare her Council seat as vacant.

Section 32 of the City Charter outlines the steps to take in filling vacancies:

Section 32. Filling Vacancies. A mayor or councilor vacancy will be filled by an election if 13 months or more remain in the office term. The election will be held at the next available election date to fill the vacancy for the remainder of the term. A mayor or councilor vacancy may be filled by appointment by a majority of the remaining council members. The appointee's term of office runs from appointment until the vacancy is filled by election or until expiration of the term of office if no election is required to fill the vacancy.

The pertinent section of the Sherwood Municipal Code (SMC) related to vacancies includes:

2.04.030 Vacancy in Office

A city elective office becomes vacant as provided by City Charter Section 31.

2.04.032 Filling of Vacancy

- A. Upon becoming aware of a vacancy in an elective office, the council must promptly determine and declare the date of vacancy.
- B. A vacancy in an elective office must be filled as provided by City Charter Section 32.

2.04.034 Appointment by Council

- A. In filling a vacancy, the council may make inquiries and hold interviews as it considers necessary for the appointment. The appointment may be made at a regular or special council meeting.
- B. The council will use the following procedures in the appointment process:

1. Public notice to appropriate neighborhood organizations, civic groups, a newspaper of general circulation and other recognized groups;
2. Deadline for submitting applications at least two weeks after the notice;
3. Appointment from those applicants nominated and seconded for consideration by members of the council. The recorder will announce the results of each ballot and will record each councilor's ballot. An applicant who receives a majority of the votes by the current council members will be appointed to the vacant position. If no applicant receives a majority vote on the first ballot, the council will continue to vote on the two applicants who receive the most votes until an applicant receives a majority of the councilors voting.

Discussion:

As of October 1, 2014, there is 27 months remaining in Councilor Folsom's term. Accordingly, Section 32 of the City Charter requires the City to fill the position at the "next available" election. The next available election is a special election in March 2015. As a reminder, we will have another vacancy to fill after the results of the mayoral race in November 2014 since the winner of the Mayor's race will need to resign from her current City Council seat. Depending upon the timing of that resignation, a second vacancy could appear on the March 2015 ballot as well.

During the interim, Section 32 of the Charter authorizes the City Council to appoint a successor ("[the] vacancy *may* be filled..."), but it is not required to do so. However, for purposes of establishing a quorum and in order to avoid tie votes, staff believes it is advisable to appoint a person to fill the vacancy.

SMC 2.04.034 establishes the appointment process. The code requires public notice and the opportunity for interested persons to apply for the position. The Council then nominates candidates from among the applicants and the person who receives a majority of votes is appointed.

The proposed resolution does the following:

1. Declares the seat vacant as of October 7, 2014;
2. States the next available election is the March 2015 special election;
3. Directs the City Recorder to provide notice of the vacancy, including the deadline for filing applications; and
4. Directs the Council to appoint a successor from among the applicants pursuant to SMC 2.04.034.

Staff recommends a deadline of Friday, October 24, 2014 at 5:00 pm for submitting applications for the vacant Council seat.

Financial Impacts:

There are no significant financial impacts from adopting this specific resolution. There will be costs to the City of Sherwood for the March 2015 special election. An estimate of those election costs are difficult to identify at this juncture due to the unknown number of other ballot items in Washington County. As a reminder, we have a budget of \$13,000 in this year's budget for election costs.

Recommendation:

Staff respectfully requests City Council adoption of Resolution 2014-063 declaring a vacancy on the City Council.



RESOLUTION 2014-063

A RESOLUTION DECLARING SHERWOOD CITY COUNCIL SEAT VACANT

WHEREAS, Section 31(b)(3) of the Sherwood City Charter declares a seat on the Sherwood City Council to become vacant upon the incumbent's ceasing to reside in the city; and

WHEREAS, City Councilor Robyn Folsom notified the Sherwood City Council that she was resigning from her current City Council seat effective September 30, 2014 due to her impending relocation of residence outside of the city limits of Sherwood; and

WHEREAS, Section 32 of the Sherwood City Charter authorizes the City Council to appoint a person to fill the vacant seat until the end of the unexpired term, or until the next available election if there are more than 13 months remaining in the unexpired term; and

WHEREAS, as of October 1, 2014, there are 27 months remaining in Councilor Folsom's term; and

WHEREAS, the next available election is in March 2015; and

WHEREAS, Sherwood Municipal Code ("SMC") Section 2.04.034 requires the City to publish notice of the vacancy and allow interested persons to apply to be considered for appointment.

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

Section 1. The Sherwood City Council declares a City Council Seat vacant as of the adoption date of this Resolution 2014-063.

Section 2. The City Recorder shall public notice of the vacancy as required under SMC 2.04.034.B. The notice shall include a deadline for filing an application, which date shall be at least two weeks from the date of notice.

Section 3. The City Council shall select and appoint a person to the vacant City Council Seat from among the applicants for the position. The nomination and selection process shall be conducted as described in SMC 2.04.034.B.3.

Section 4. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of October 2014.

Bill Middleton, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Tom Pessemier, Assistant City Manager
Through: Joseph Gall, ICMA-CM, City Manager

SUBJECT: Resolution 2014-064 to approve and ratify a successor Collective Bargaining Agreement and Letter of Agreement between the City of Sherwood and the Sherwood Police Officers Association (SPOA), authorizing the City Manager to execute the agreements

ISSUE:

The City of Sherwood has completed negotiations with SPOA and has reached a tentative successor agreement that has been ratified by SPOA and is ready for City Council ratification.

BACKGROUND/SUMMARY:

City Staff, including Tom Pessemier, Julie Blums and Ty Hanlon, along with City Labor Attorney Howard Rubin began negotiations with SPOA in April 2014. Both sides were well prepared for the negotiations and worked to develop more concise language and work through rough spots from prior agreements. The tentative successor agreement took months to finalize but we hope that the effort will bring the agreement up to current standards so it will be easier to work with in the future. The City has reached a tentative successor agreement with SPOA. Staff and legal counsel believes this agreement serves the City's interests.

The successor agreement includes many changes with the main items noted below;

The agreement is a 3 year agreement, expiring June 2017.

Article 7: Sections 3 and 7. Minor changes to number of bargaining unit members allowed to attend contract negotiations and training for critical incident management.

Article 11 Assignment ~~Promotion and Transfer~~: Sections 2-9 were eliminated since there is only one police officer position and the language was unnecessary.

Section 2. Bidding: Was added to put in place the current practice with some minor changes that will help the City and the Association manage schedules. The fix created a temporary

issue because the current and proposed bidding periods are different. The issue is resolved in the Letter of Agreement by extending the period to be consistent with the agreement.

Article 12 Performance Evaluations: Fixed the issues in the current agreement with the timing of evaluations for probationary employees. Employee hire dates and anniversary dates were not the same under the current agreement and the changes fixed that issue. In addition there were changes that take the current 11 step salary matrix and changed it to a 6 step matrix. This is consistent with all other agencies in the area and did not significantly change the total amount paid to an employee from hire date until reaching the top step. By eliminating some steps four officers were between steps. The issue was resolved in the Letter of Agreement by setting their salaries until their next anniversary date.

Article 13 Probationary Periods: Sections 4 and 5 were eliminated because there is only one police officer position.

Article 16 Overtime: A significant number of changes were made to make it clear when overtime would apply. Current practice allowed for overtime to be paid in weeks where PTO or Leave time was utilized. In certain circumstances that will still be possible but for most situations it will not be allowed. "Force in" provisions were changed significantly to match the current practice with some modifications agreeable to both parties. Language noting the ability to trade shift assignments was modified to address overtime changes.

Article 17 Callback: Callback provisions were modified for Circuit Court appearances which were taking longer than the current agreement allowed.

Article 18 Salaries: Effective July 1, 2014 the salary schedule will reflect a 1.4% cost of living adjustment (COLA). This will become retroactive upon execution of the agreement.

Article 19 Premium Pay: Many changes to this section occurred. The most significant were to change the cap which was up to 22.5% under the current agreement. The Cap was lowered to 15% and a couple of items were converted to a monthly pay. Those items were Residency in the Sherwood City Limits and Fluency in speaking the Spanish language. Senior Officer Pay of 2% was added for officers with over 10 years of service in the City or 15 years of full time law enforcement experience.

Article 20 Insurance: The City will contribute an additional 3% (from 87% to 90%) of the PPO plan insurance.

Article 23 Paid Time Off: Disability PTO name was changed to Sick Leave to match what is currently practice in the system. Cash Out was changed to allow two cash out periods per year. This change was necessitated due to the changes in the Overtime portions of the agreement.

Article 24 Other Leaves: Language was cleaned up or eliminated to match Federal, State and Local laws.

Appendix A: Modified to 6 steps as stated in Article 12.

Appendix C: Modified to provide two testing times during the year.

Other Articles: Several portions of language “clean-ups” with no substantive changes to current practice.

FINANCIAL IMPACTS:

There are financial impacts to the City both in increases and decreases due to the changes in the agreement. Overall it is expected that the net financial change is almost cost neutral with some minor increases due to the increase in insurance percentage covered by the City.

FINDINGS:

Staff completed a largely positive negotiation process with SPOA and we feel that this agreement will serve both parties well into the future.

RECOMMENDATION:

Staff respectfully recommends City Council adoption of Resolution 2014-064, to approve and ratify a successor Collective Bargaining Agreement and Letter of Agreement between the City of Sherwood and the Sherwood Police Officers Association (SPOA), authorizing the City Manager to execute the agreements.



RESOLUTION 2014-064

APPROVE AND RATIFY A SUCCESSOR COLLECTIVE BARGAINING AGREEMENT AND LETTER OF AGREEMENT BETWEEN THE CITY OF SHERWOOD AND THE SHERWOOD POLICE OFFICERS ASSOCIATION (SPOA) AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS

WHEREAS, City and SPOA representatives thoroughly considered all aspects of the current collective bargaining agreement and negotiated changes to the agreement; and

WHEREAS, the City Council has been presented with information about the changes to the Agreement between the City of Sherwood and SPOA to be known as the successor collective bargaining agreement (Agreement); and

WHEREAS, the City of Sherwood and SPOA members have worked in good faith on the Agreement to ensure that it meets the financial and operational needs of the City and the Association; and

WHEREAS, SPOA voted to ratify the Agreement in September of 2014; and

WHEREAS, the Agreement will remain tentative until ratified by the Sherwood City Council and will be effective upon execution and remain in effect through June 30, 2017; and

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

Section 1. The Agreement and Letter of Agreement are hereby approved and ratified by the Sherwood City Council and is approved for adoption. The Agreement is attached as “Exhibit A”. The Letter of Agreement is attached as “Exhibit B”.

Section 2: The City Manager is hereby authorized to sign the Agreement and the Letter of Agreement between the City of Sherwood and SPOA.

Section 3: This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of October 2014.

Bill Middleton, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

**COLLECTIVE BARGAINING AGREEMENT
BETWEEN
SHERWOOD POLICE OFFICERS'
ASSOCIATION
AND THE
CITY OF SHERWOOD**

Expires: June 30, 2017

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ARTICLE 1 – PREAMBLE

Section 1. This Collective Bargaining Agreement (hereinafter “the Agreement”) is entered into between the City of Sherwood, Oregon (hereinafter “the City”) and the Sherwood Police Officers’ Association (hereinafter “the Association”) and sets forth the parties’ Agreement with regard to wages, hours, and other conditions of employee relations as defined by law. The purpose of this Agreement is to promote efficient operation of the Police Department, harmonious relations between the City and the Association, and the establishment of an equitable and peaceful procedure for the resolution of differences.

ARTICLE 2 – RECOGNITION

Section 1. The City recognizes the Association as the sole and exclusive bargaining agent for all regular full-time, sworn law enforcement officers excluding the chief, sergeants, supervisors and confidential employees of the Police Department, with respect to wages, hours and other conditions of employment.

Section 2. If a new classification is added to the bargaining unit by the City, the Association shall be provided with the City’s proposed rate of pay and a copy of the job description. That rate shall become permanent unless the Association files written notice of its desire to negotiate the permanent rate within ten (10) calendar days from the date it receives its notification of the classification. If a request for negotiations is filed by the Association, the parties shall begin negotiations within fifteen (15) calendar days. If there is disagreement between the parties as to the exclusion of a new position from the bargaining unit, such issue will be subject to the procedures of the Employment Relations Board.

ARTICLE 3 – MANAGEMENT RIGHTS

Section 1. The Association recognizes and agrees that responsibility for management of the City and direction of the various departments rests solely with the City, and the responsible department heads. Except where abridged by specific provisions of this Agreement, the Association recognizes and agrees that in order to fulfill this responsibility, the City shall retain the exclusive right to exercise the regular and customary functions of management, including, but not limited to: directing the activities of the Police Department; determining standards and levels of service and methods of operation, including subcontracting, where Association members are not denied work opportunities as a result; the introduction of new technology and equipment; hiring, promoting, transferring and laying off employees; disciplining and discharging employees for just cause; promulgating policies and procedures; determining work schedules; assigning work; and, with no less than sixty (60) days advance notice to the Association, modifying how employees are paid or the dates employees are paid.

Management rights and prerogatives, except where abridged by a specific provision of this Agreement, are not subject to the grievance procedure specified in Article 10. The City retains all rights, powers and privileges not expressly specified in this section and not specifically abridged by this Agreement or statute.

Section 2. Nothing herein shall be considered a waiver of the Association's rights to collectively bargain any changes in the status quo which are mandatorily negotiable or impact a mandatory subject of bargaining.

ARTICLE 4 – EMPLOYEE RIGHTS

Section 1. Employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing, for the purpose of representation on matters of employee relations. Employees shall also have the right to refuse to join and participate in the activities of any employee organization. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by an employee organization because of their exercise of these rights.

ARTICLE 5 – CONTINUITY OF SERVICES

Section 1. During the term of this Agreement the Association's membership will not participate in any strike against the City under any circumstances. For the purpose of this Agreement, "strike" is defined as any concerted stoppage of work, slow down, speed up, sit-down, absence from work upon any pretense that is not found in fact, or any interference which affects the normal operation of the Police Department.

Section 2. In the event of violation of this provision by the Association or members of the Association, the City may discipline or discharge any employee involved in such activity.

ARTICLE 6 – CONTINUATION OF THE STATUS QUO

Section 1. Standards of employment related to wages, hours, working conditions, and other employee relations matters as defined by law, that constitute mandatory subjects of bargaining and which are the status quo as of the date of this Agreement by reason of mutual knowledge, acceptance and repetition based on such mutual knowledge and acceptance shall be continued for the term of this Agreement, except as provided for in Section 3 below. The parties acknowledge that this agreement contains the entire economic compensation package for members of the bargaining unit.

Section 2. Nothing in this Agreement, or in this Article, will be construed to prevent the City from initiating any program or change which is not contrary to an

express provision of this Agreement or the status quo as provided in Section 1 hereof.

Section 3. In the event the City desires to amend or modify or change the status quo that is a mandatory subject of bargaining or that has a mandatory impact, the City will provide an Association Executive Officer with oral and written notice of the proposed change. The Association shall have fourteen (14) calendar days to object in writing and orally to the person proposing the change or their designee. The failure of the Association to object in writing to the proposed change within fourteen (14) calendar days of the notice provided for above shall serve as a waiver of the Association's right to bargain. The Association's written objection shall specify the nature of the objection and identify whether the Association believes the proposed change involves a mandatory bargainable subject or a mandatory bargainable impact of a permissive subject.

ARTICLE 7 – ASSOCIATION BUSINESS

Section 1. Subject to supervisory approval, grievances may be investigated on working time of the Association Officer and the employee involved. The Association's President or Vice-President or Secretary/Treasurer, and the employee involved, may process grievances during working time for the purpose of attendance at meetings with a grievant's supervisors concerning the grievance where such discussions do not unreasonably interfere with performance of the Association Officer's or the employee's duties.

Section 2. Association representatives who are certified as such in writing shall be allowed access to employee work locations for the purpose of processing grievances or for contacting members of the Association. Such representatives shall not enter any work location without the consent of the Chief or his designee. Access shall be restricted so as not to interfere with the normal operations of the Police Department or with established security requirements.

Section 3. The City shall allow up to three (3) bargaining unit members to attend contract negotiations, up to two of whom may attend during duty hours without loss of pay. One officer shall be allowed to use flex time (if that officer normally works a flexible schedule) or paid time off to attend bargaining sessions. The time, date and place for bargaining sessions shall be established by mutual agreement between the parties.

Section 4. The City agrees to allow the Association to maintain the bulletin board already provided by the City for use by the Association. The Association shall limit its posting of notices and bulletins to this board.

Section 5. On duty employees may attend Association meetings within the City limits no more often than quarterly and no longer than one (1) hour in duration, but

shall be subject to call. Sherwood Police Department facilities may be used for Association meetings on advance arrangements.

Section 6. The employer shall provide access to a copy machine for an Association member to print and provide sufficient copies of this Agreement for distribution to all Association members and all future Association members employed during the term of this Agreement.

Section 7. The City agrees to allow Executive Board members of the Association to attend up to a combined total of thirty two (32) hours per fiscal year for training related to operational issues such as critical incident management and *Garrity* rights without experiencing a loss of pay. Requests for training under this Section shall be made in writing and subject to approval by the Chief of Police. Such approval shall not be unreasonably denied.

ARTICLE 8 – CHECK-OFF AND PAYMENT IN LIEU OF DUES

Section 1. The City will deduct Association dues from the wages of employees when so authorized and directed in writing by the employee on the authorization form provided by the City. Any authorization for payroll deductions may be canceled by any employee upon written notice to the City and the Association prior to the fifteenth (15th) day of each month, to be effective on the first (1st) day of the following month.

Section 2. The City agrees to notify the Association of all new hires in the bargaining unit within two (2) weeks after their date of hire, furnishing the Association with the new employee's name, social security number, mailing address, telephone number and position for which they were hired.

Section 3. Any regular employee who is a member of the bargaining unit and has not joined the Association within thirty (30) calendar days of becoming a regular employee, or who has joined within such time and withdrawn from membership after such thirty (30) calendar days, shall have deducted from their pay by the City a monthly service fee in the uniform amount of the payment in lieu of dues to the Association. The payment in lieu of dues shall be segregated by the Association and used on a pro-rate basis solely to defray the cost for its service rendered in negotiating and administering this Agreement. Such deduction shall be made only if accrued earnings are sufficient to cover the payment in lieu of dues after all other authorized payroll deductions have been made.

Section 4. Any individual employee objecting to payment in lieu of dues based on bona fide tenets or teachings of a church or religious body of which such employee is a member is required to inform the City and the Association of their objection. The employee will meet with the representatives of the Association and establish a mutually satisfactory arrangement for distribution of a contribution of an amount of

money equivalent to the above-mentioned payment in lieu of dues to a charitable organization mutually agreed upon by the employee and the Association. The employee shall furnish written proof to the City that such has been accomplished, as appropriate.

Section 5. The Association agrees to indemnify, defend and hold the City harmless against any claims made and against any suit instituted against the City as a result of any payroll deductions made under this Agreement.

ARTICLE 9 – DISCIPLINE AND DISCHARGE

Section 1. Definition. Disciplinary action or measures for violations of rules or regulations shall include only the following: oral reprimand, written reprimand, suspension, reduction in pay/deprivation of privileges or benefits, demotion or dismissal. Disciplinary action is usually progressive in nature, but may be imposed at any level if supported by just cause and based upon the seriousness of the offense and the particular circumstances of the employee. It is recognized by the parties that each situation calling for possible disciplinary action is unique to its particular circumstances and that appropriate disciplinary action will be considered in the context of such circumstances.

Section 2. Process. If the City has reason to discipline an employee, the employee shall have the right to be represented by an Association representative and/or Association attorney during such procedure. If the City has reason to discipline an employee, it will take all reasonable measures to assure against embarrassment of the employee before other employees or the public.

Section 3. Association Representation. In the event of any interview which may reasonably lead to disciplinary action, the affected employee shall have the right to be assisted by an Association representative and/or Association Attorney during such procedures. The parties mutually agree to the “Internal Investigation Procedures” attached hereto as Appendix B and incorporated herein.

ARTICLE 10 – DISPUTE RESOLUTION PROCESS

Section 1. For the purpose of this agreement, a grievance is defined as any one of the following:

- a. A claim by an employee covered by this agreement concerning the meaning or interpretation of a specific provision or clause of this agreement as it affects such employee;
- b. A claim by the Association concerning the application of a specific provision or clause of this agreement as it affects a specific member of the Association.

An individual employee who does not wish the Association's Executive Committee to pursue a disciplinary grievance (under Section 1(b) hereof) may notify the Association in writing at any time. A grievance which is resolved after an individual's exercise of the right to withdraw consent hereunder shall not constitute a precedent with regard to the substance of the grievance in question.

Section 2. Informal Grievance Adjustment. The City and the Association desire to adjust grievances informally -- both supervisors and employees are expected to make efforts to resolve problems as they arise. The informal step in the grievance process -- Step 1 - may be waived in writing by mutual agreement of the City and the employee and/or the Association. Unless so waived, a grievance shall be filed at Step 1 as follows:

Step 1: To commence resolution of a grievance, the employee and/or the Association shall notify the appropriate supervisor that the employee believes a problem exists and shall identify the affected parties. Such notification shall be in writing and must occur within fourteen (14) calendar days of the occurrence which gave rise to the problem, not including the day of the occurrence. For purposes of this section, the appropriate supervisor is defined as the Sergeant or Captain delegated authority by the City to deal with the specific problem or concern. The grievance shall state supporting facts and proposed solution(s). If the action grieved is that of the Chief or City Administration the grievance shall be filed at Step 2.

Section 3. Formal Grievance Adjustment. The following steps shall be followed in submitting and processing a formal grievance, only after the informal grievance procedures have been completed without reaching a resolution or when the action grieved involves a decision of the Chief or City Administration:

Step 2: If the grievance is not settled at Step 1, the employee and/or the Association shall submit the grievance in writing to the Chief, within ten (10) calendar days from the date the written summaries provided for in Section 2 above were exchanged or were due, not including the day of the reply. The Chief or his/her designee shall issue a response in writing within ten (10) calendar days from the date of presentation, not including the day of presentation, after attempting to resolve the matter.

Step 3: If the grievance is not settled at Step 2, the employee and/or the Association shall present the grievance to the City Manager or his/her designee within ten (10) calendar days from the date of response from the Chief, or the date such response was due, not including the day of response. The City Manager or his/her designee shall attempt to resolve the grievance and report in writing the decision within ten (10) calendar days from the date it is submitted to the City Manager, not including the day of presentation.

Step 4: If the grievance is not settled at Step 3, the Association may pursue the grievance further by filing a written notice of intent to arbitrate the grievance with the City Manager within fifteen (15) calendar days of the date the decision of the City Manager is received, not including the day of receipt. The parties shall request a list of nine (9) Oregon/ Washington arbitrators from the Employment Relations Board. If the parties cannot mutually agree to an arbitrator, they will alternately strike names and the last one will be the arbitrator.

Section 4. The arbitrator shall set a hearing date and shall render a decision within thirty (30) calendar days after the conclusion of the hearing. The power of the arbitrator shall be limited to interpreting this Agreement, determining if it has been violated, and to resolve the grievance within the terms of this Agreement. The arbitrator has no authority to add to, delete from, amend, or modify any terms of this Agreement or make a finding in violation of law. The decision of the arbitrator shall be final and binding on both parties. Each party shall be responsible for costs of presenting its own case to arbitration. Costs incurred in connection with the arbitration hearing will be divided equally, provided that the losing party shall be responsible for the arbitrator's fee and expenses.

Section 5. If at any step of the grievance procedure the grievant fails to comply with the time limits or procedures set forth in this Article, the grievance shall be deemed abandoned and non-arbitrable. If at any step of the grievance procedures the City fails to issue a response within the time limits set forth in this Article, the grievance will be advanced to the next step. Processing of the grievance and the time limits referred to in this Article may be waived or extended by mutual agreement in writing.

Section 6. An authorized Association representative and employee(s) directly involved in a particular grievance shall be allowed to attend meetings with representatives of the City without loss of regular pay. The Association shall advise the City as to which employee(s) will attend such meeting. It shall be the responsibility of each individual employee to provide advance notice of the meeting to his/her immediate supervisor.

Section 7. All disciplinary action imposed upon an employee, except oral reprimands, may be protested as a grievance through the regular formal grievance procedure, up to and including binding arbitration. Disciplinary grievances may be initiated, within the time limit prescribed in Section 3, at Step 2 of this procedure.

ARTICLE 11 – ASSIGNMENT

Section 1. Vacancies for a full time specialty assignment that are to be filled on other than a temporary (six (6) months or more) basis shall be published for at least ten (10) working days prior to filling. Employees wishing to be considered for such

posted positions shall submit the application materials required of all applicants. All applicants will continue to retain current status and seniority as an employee of the City.

Section 2. Bidding. Except in circumstances where it is necessary to distribute employees to meet the reasonable operating needs of the department (i.e. special assignments, unforeseen or emergency situations, training), employees assigned to Patrol will be assigned to available shifts and days off based upon a bid process. Bidding of shift assignments and days off while assigned to Patrol, will take place annually as follows:

- The City will post shift and seniority vacation bid schedules by November 1;
- Employees will complete the shift and seniority vacation bid schedules by November 30; and
- The City will publish the final shift and seniority vacation schedules by December 31. The schedules will be effective February 1 – July 31 and August 1 – January 31. Bidding priority will be by seniority.

Employees may remain on a shift for up to two (2) years, after which they will rotate to another shift for at least six (6) months. An employee who is required to rotate to another shift may only bump the least-senior employee on another shift regardless of the shift that employee is working, and the employee who is bumped shall be assigned the shift and days off of the employee who is required to rotate to another shift. An exception to the requirement to rotate to a different shift after two (2) years may occur if an officer is able to find another officer who is willing to trade shifts and the trade is approved by the Chief or his/her designee.

Notwithstanding the terms of this Section, the City shall have the sole and exclusive right to designate a “bumpable slot” on any shift for an employee during that employee’s last six (6) months of the probationary period (and any extension of the probationary period), and assign that employee to work any shift regardless of any employee’s seniority. The City’s assignment of an employee to the “bumpable slot” shall not be subject to the bidding procedure in this Section. The employee who is bumped will be assigned to the shift and days off of the probationary employee for the duration of the probationary period of the probationary employee.

ARTICLE 12 – PERFORMANCE EVALUATIONS

Section 1. Regular non-probationary employees will be evaluated annually and shall receive a copy of their annual evaluation. The employee may submit a statement which will be attached to the evaluation and become a part of their personnel file. The employee shall sign their evaluation, indicating only that they have read the evaluation. Probationary employees will receive formal daily

evaluations while assigned to a training officer; they also will receive a written evaluation after working twelve (12) months, and prior to completion of the probationary period. Formal notification of completion of the initial eighteen (18) month probationary period will be sent to Personnel.

Unless otherwise prohibited by law, if an employee's anniversary date or yearly performance evaluation falls during a leave without pay period of thirty (30) calendar days or longer, the anniversary date and performance evaluation shall be postponed until the employee has returned to work and completed as many days of continuous employment as the length of the leave without pay period.

Section 2. Any employee who is dissatisfied with an evaluation may appeal that evaluation to the Chief of Police within fourteen (14) days after receipt of the evaluation.

Section 3. Periodic salary increases are established in Appendix "A" and are based upon receipt of a satisfactory performance evaluation as indicated in an employee's written performance evaluation.

Officers hired at entry level will be placed at the Step 1 Police Officer rate within the salary matrix established in Appendix A and will be eligible to advance to the Step 2 Police Officer rate after one (1) year of employment with the City. Officers hired as laterals shall be placed at the step commensurate with their prior law enforcement experience as determined in the sole discretion of the Chief of Police.

All officers are eligible for advancement to the next step in the matrix upon each anniversary following placement at Step 2 or above and based upon receipt of a satisfactory performance evaluation. A grievance concerning the denial of a step increase as a result of an evaluation of less than satisfactory performance may be pursued through Step 3 of Article 10.

ARTICLE 13 – PROBATIONARY PERIODS

Section 1. All original appointments shall be tentative and subject to a probationary period of eighteen (18) consecutive months' service. Promotional appointments shall be subject to a probationary period for twelve (12) months. During the first six (6) months of the initial probationary period of a newly hired sworn law enforcement officer, the employee shall not be eligible for Paid Time Off or sick leave benefits, but they shall earn Paid Time Off or sick leave credits to be taken at a later date. Unless otherwise prohibited by law, if an employee is absent from the employee's position for a period of thirty (30) calendar days or longer, the employee's probationary period shall be extended by the length of the absence from the position.

Section 2. Upon satisfactory completion of the probationary period, the employee shall be considered as having satisfactorily demonstrated qualifications for the position, shall gain regular status, and shall be so informed by the appropriate supervisor.

Section 3. During the initial probationary period of a new hire, an employee may be terminated at any time without appeal under the grievance procedure.

ARTICLE 14 – SENIORITY, LAYOFF AND RECALL

Section 1. Seniority shall be achieved following completion of the employee's probationary period of eighteen (18) months. Seniority shall be determinative with respect to leave scheduling, requests for other leave time off, and selection of shifts and days off pursuant to Article 11, Section 7. For these purposes, seniority shall be defined as time served within the bargaining unit. The seniority of two (2) or more employees employed on the same date shall be determined by a drawn lot.

Section 2. Seniority shall be terminated if an employee quits, is discharged for just cause, is laid-off and fails to respond to written notice as provided herein, fails to report to work at the termination of a leave of absence, or is retired.

Section 3. The City shall post a seniority list as of January 1 and July 1 each year and provide a copy of the list to the Association on those dates.

Section 4. If the City should reduce its work force, layoff shall be made within each job classification in a Department on the following basis: Employees will be laid off in inverse order of seniority within their classification within their department. For purposes of determining order of layoff within a classification, seniority shall be based on continuous service, within that classification. Where seniority is equal, ties will be broken by lot.

Section 5. An employee notified of layoff may either accept the layoff, or at the employee's option, elect to displace the least senior employee in a lower classification with a lower pay range as long as the bumping employee has greater seniority as defined in Section 1 and is fully qualified to perform all aspects of the job. An employee who displaces an employee in a classification with a lower salary range for the purpose of avoiding layoff shall be paid at the rate for the job. If the employee's salary is above the top of the lower range, the employee will move to the top of the lower range.

Employees laid off for a period of twenty-four (24) months or who decline recall lose all seniority credits and shall be removed from the recall list. Employees recalled within twenty-four (24) months of their date of layoff shall be recalled to their prior classification or a lower classification for which they are qualified on a seniority basis. No new employees shall be hired for a classification until

employees laid off from that classification have been notified of an offer of an opportunity to return to work.

The City shall notify a laid off employee, who is still on the recall list, of a position opening within their prior classification or in a lower classification by certified letter, return receipt requested, to their address of record maintained in the employee's personnel file. It shall be the employee's responsibility to ensure that their current address is on file at the time the recall occurs. The employee shall have five (5) days from receipt, or return by the post office, of such notice, to notify the City in writing of their intent to return within fifteen (15) days of the date of receipt of such notice. If the employee fails to so respond to a recall notice within the time herein specified, all rights to recall shall be terminated.

A refusal of reinstatement to one's former classification shall constitute voluntary termination and such employee shall lose their layoff status privileges and their seniority.

ARTICLE 15 – HOURS OF WORK

Section 1. Workweek and Workday. The regular City workweek is a period of one hundred sixty eight (168) consecutive hours that begins at 12:01 a.m. Sunday and ends at midnight on the following Saturday. The regular City workday consists of a work shift of eight (8) or ten (10) consecutive work hours.

Section 2. Work Schedules. Work schedules shall be established by the Police Chief or his/her designee and shall be posted in advance of the shift bid described in Article 11, Section 2. The City reserves the right to modify any posted work schedule whenever such modifications are in the best business interest of the City.

- A. A “5-8” work schedule shall consist of five (5) consecutive days of eight (8) work hours each followed by two (2) consecutive days off.
- B. A “4-10” work schedule shall consist of four (4) consecutive days of ten (10) work hours each followed by three (3) consecutive days off.
- C. The parties agree that Detectives and SROs shall normally work a flexible schedule. Employees working flexible schedules, with their supervisor’s approval, shall schedule their hours and days of work in order to meet community and operational (criminal activity) needs, based on a forty (40) hour workweek. If the City elects to discontinue the flexible schedule, it shall provide the employee with at least seven (7) days’ advance notice.
- D. The City and the Association may agree to an alternative work schedule. In the event an alternative work schedule is implemented, the parties agree to meet to negotiate its

implementation and any other contract changes as may be necessary.

Section 3. All employees shall be granted a thirty (30) minute compensated meal period during each work shift, to the extent possible and consistent with operating requirements of the Department. Employees shall be subject to call during the meal period.

Section 4. All employees may be granted two (2) paid fifteen (15) minute interruptible rest periods each day, to the extent possible and consistent with operating requirements of the Department.

Section 5. Each employee shall be assigned a regular work schedule, which may be modified without penalty by mutual agreement between the City and the employee(s) involved. Employees will normally be given seven (7) days advance notice of any change in their regular hours of work or work schedule. Employees whose schedules are changed involuntarily by the City on less than seven (7) days' notice will be paid overtime for time worked outside their regular work schedule, except in an emergency (Act of God, natural disaster, civil unrest or governmental declaration of emergency) when the schedule change is unknown seven (7) days in advance of the change and except in the case of schedule changes by mutual agreement as provided herein. In no event will overtime pay be duplicated under any other provision of this Agreement.

ARTICLE 16 – OVERTIME/COMPENSATORY TIME

Section 1. In cases where the City needs persons to work an extra shift, it shall attempt to assign such shift first among those willing to work the extra shift on a voluntary basis. When known in advance, the City will post an extra shift sign-up sheet which will identify the opportunity and whether the assignment requires special skills, knowledge or abilities. In the event no one is willing to work the extra shift on a voluntary basis, the extra shift will be assigned in inverse order of seniority to those possessing the necessary skill, knowledge and abilities to perform the overtime assignment. The City will provide the Association with a list by January 1 and July 1 of each year illustrating the overtime distribution to members of the bargaining unit.

Section 2. Time and one-half the employee's regular rate shall be paid for authorized work in excess of:

- A. Eight (8) hours per workday if a 5-8 schedule, ten (10) hours per workday if a 4-10 schedule;
- B. Forty (40) hours in a workweek; or
- C. Work incident to a schedule change on less than seven (7) days' notice pursuant to Article 15, Section 5;

Overtime shall be calculated to the nearest quarter hour.

Detectives and SROs shall receive overtime only for authorized work in excess of forty (40) hours in a workweek if they are working a flexible schedule.

Section 3. Sergeants, Captains, and the Chief of Police are the only employees authorized to require or authorize overtime by employees. No premium pay will be paid for unauthorized overtime work and employees may be subject to discipline, up to and including discharge.

- A. The City will assign officers to cover hours with less than 72 hours advance notice in the following order:
 - 1. Officers working on a shift that needs to be covered or scheduled for the next shift will be asked to cover the necessary hours on a voluntary basis. Officers cannot work additional hours under this paragraph that would cause the Safety Release provision (Article 17, Section 8) to apply.
 - 2. If officers working on a shift that needs to be covered or scheduled for the next shift cannot cover the required shift hours the City will use the “force in” list to cover the necessary hours.

The City will use a rotating “force in list.” beginning with the least senior officer. An officer who has been “forced in” will then be placed at the bottom of the “force in list.” The City will post the “force in list” periodically. Detectives shall not be placed on the “force in list”.

The City will attempt to avoid “forcing in” any officer for a shift when the officer has scheduled vacation or comp time, including their regular scheduled days off immediately before and after their scheduled vacation or comp time.

- B. The City will assign officers to cover hours with at least 72 hours advance notice in the following order:
 - 1. Available hours will be posted in the briefing room. Officers can sign up to work the available hours. Officers cannot work additional hours under this paragraph that would cause the Safety Release provision (Article 17, Section 8) to apply.
 - 2. If a shift goes unassigned, the City shall follow the procedures set forth in Article 16. Section 3. A.

Section 4. An employee may elect to be compensated for overtime worked in cash, or by accruing compensatory time off. Compensatory time shall be earned at one and one-half (1 1/2) times the overtime hours worked but shall not exceed a maximum of seventy (70) hours. Accrued compensatory time in excess of seventy (70) hours shall be paid at one and one-half (1 1/2) times the employee's regular rate of pay.

Section 5. (1) Scheduling of comp time shall be done in conformity with the Fair Labor Standards Act (FLSA). The parties agree that the City will not be obligated to schedule compensatory time off, and that such request is unduly burdensome if the request requires the City to drop below minimum manning levels or if the City does not receive at least seven (7) days advance notice of the requested time off. An exception to seven (7) days advance notice will be made in instances where the employee is given the next shift off pursuant to Article 17, Section 9.

(2) Concurrent Leaves. If the leave is for a qualified state or federal family leave purpose, all leaves of absence, no matter how classified, shall be granted against the employee's annual family leave entitlement. In such case, the employee, upon request, shall provide health certification, including second and third opinions and fitness for duty certification as provided by family leave laws.

Upon termination of employment, an employee shall be paid for unused compensatory time at a rate of compensation equal to the employee's regular hourly rate received by the employee at the time of termination.

Section 6. For the purposes of Articles 16, 17 and 18 of this Agreement and calculating overtime, all paid leave shall not count as hours worked.

Section 7. Subject to approval by the Chief of Police, a Captain, or a Sergeant, employees may trade a regularly assigned shift for another shift, as long as the employees work the same number of hours in the same workweek.

ARTICLE 17 – CALLBACK

Section 1. Employees who report for their regular shifts shall be compensated for a minimum of four (4) hours of work or pay unless given advance notice not to report. Employees who are required to report for work at Circuit Court outside their regular shift or on their day off will be paid a minimum of four (4) at one and one-half (1 1/2) times their regular rate unless the callback is within two (2) hours of their regular shift, in which event the employee will be compensated for the actual hours worked at one and one-half (1 1/2) times their regular rate. In all other instances when employees are required to report for work outside their regular shift or on their days off, they will be paid a minimum of three (3) hours.

Section 2. (1) Any employee required to report for court appearance more than two (2) hours before the beginning or more than two (2) hours after the end of the employee's regular shift, shall be compensated for a minimum of three (3) hours of work at the rate of time and one-half.

(2) An employee who has received notice of a court appearance, shall confirm the court appearance at least sometime after the close of business on the day prior to the court appearance.

(3) When an employee has complied with Article 17 §2(2), unless an employee is given two (2) hours advance notice of cancellation, the employee shall receive compensation pursuant to Article 17 §2(1).

Section 3. Any employee required to appear for a court appearance less than two (2) hours after the end of his regular shift shall be compensated at the rate of time and one-half of the time elapsed between:

- A. The reporting time and the beginning of the regular shift, or
- B. The end of the regular shift and the time the employee is released from court, whichever is applicable.

Section 4. For purposes of this policy, court appearance by an employee means a court appearance required as a result of the employee's official capacity with the City of Sherwood.

Section 5. For purposes of this policy, reporting time for such appearances is deemed to be one-half (1/2) hour before the time indicated on the official notice to appear, unless an earlier appearance time is approved by the Chief or his designee.

Section 6. More than one callback or court appearance within the applicable minimum shall be considered a single callback. Any time worked beyond the minimum will be applied as added time. Subsequent court appearances or callbacks, scheduled with more than the applicable time interval shall be paid as separate appearances or callbacks.

Section 7. Employees who are on off-duty status, shall not be required to do work beyond the completion of a specific callback or court appearance.

Section 8. Safety Release: Employees working sixteen or more hours in a twenty-four hour work day shall be provided at least eight hours of safety release time before beginning their next regularly scheduled shift. The employee shall advise an on-duty Supervisor or Officer-in-Charge as soon as he or she reasonably believes their shift will extend beyond sixteen hours and no later than one hour before reaching the sixteen hour threshold, unless to do so is not feasible. Notwithstanding the terms of Article 23, Section 6(C), if the safety release time will extend into the

employee's next regularly scheduled shift, the employee may use accrued leave or unpaid leave to cover the period of absence from that shift. The use of accrued leave shall not count as hours worked for purposes of Articles 16, 17 and 18 of this Agreement and calculating overtime. If the employee does not have sufficient accrued leave, the employee may use unpaid leave. If the safety release time will extend more than half-way through the employee's next shift, the employee may opt to use such accrued leave for the entire shift.

Detectives and SRO Exemption. Because Detectives and SROs normally work a flexible schedule, they shall not be subject to this provision. However, unit supervisors will continuously monitor Detectives and SROs for fatigue related safety issues in the spirit of this provision.

Section 9. All witness fees paid to an employee who is receiving compensation covering the same time and expense covered by said fees shall be turned over to the City of Sherwood Finance Department.

ARTICLE 18 – SALARIES

Section 1. Effective July 1, 2014, the salary scale will be as set forth in Appendix A reflecting a 1.4% cost of living adjustment.

Section 2. Effective the first full payroll period in July 2015, increase the wage scale across the board (by applying percentage increase to first step and maintaining 5% between steps), by a percentage equal to the CPI-W, West Index, for the 12 months ending December 31, 2014, maximum 5%.

Section 3. Shift differential pay will be paid at the rate of seventy-five cents (\$.75) per hour, in addition to the employee's regular rate of pay, for employees working the graveyard shift. The graveyard shift is defined as any shift in which the majority of hours worked are between midnight and 6 am. It is understood that this shift differential shall only be paid when an employee is actually working the graveyard shift. Any work performed by a graveyard shift employee on day shift or swing shift shall not include the shift differential.

ARTICLE 19 – PREMIUM PAY

Section 1. Officers shall receive additional compensation for the highest professional certification the employee has received through the State of Oregon Department of Public Safety Standards and Training and for the highest level of education the employee has received through a two (2) or four (4) year accredited college or university as follows:

Intermediate certificate	2.5%
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Advanced certificate	5.0%
AA degree	2.5%
BA degree	5.0%

Section 2. Officers are eligible for additional premium compensation as outlined below:

Assignment to Detectives	5.0%
Assignment to Field Training Officer ¹	5.0%
Assignment to Motorcycle Officer ²	5.0%
Assignment to Officer-in-Charge ³	5.0%
Residency within Sherwood City Limits	\$125 per month
Fluency in speaking Spanish language ⁴	\$250 per month
Assignment to School Resource Officer	5.0%
Assignment to K9 Officer (under FLSA standards)	5.0%

Certification pay shall be computed based upon the employee’s base salary. All such premiums outlined in Sections 1 and 2 above are intended to compensate the employee for FLSA purposes for any additional time that may be necessary in performing the assignment. All work performed for the assignment beyond the regular shift must be approved by the Chief or his/her designee and properly recorded by the officer performing the assignment.

¹ The premium for Field Training Officer will be available to the officer assigned to a trainee while the officer is actually working as the Field Training Officer with the trainee.

²The premium for Motorcycle Officer will be available to officers for the duration of the assignment. The parties agree that commuting to work on the motorcycle does not constitute “hours of work” and if allowed, is purely for the benefit of the Motorcycle Officer.

³ The premium for Officer-in-Charge will be available to officers for the duration of the assignment, but not in increments of less than a full hour.

⁴ An employee shall be eligible to receive the Spanish language premium if he/she provides the Department with mutually satisfactory proof, subject to retest at City discretion, that they are fluent in speaking the Spanish language.

Section 3. In no instance will an officer be entitled to receive combined premiums in excess of 15% for those premiums set forth in Sections 1 and 2 above, excluding the Officer-in-Charge, speaking Spanish language and Residency within Sherwood City Limits premiums. For purposes of Section 2, only 5% may be based on a full time job assignment, excluding the Officer-in-Charge premium. The premiums set forth in this Article shall be the only premiums for which officers will be eligible during the term of this agreement.

Section 4. Senior Officer Pay. Upon their tenth (10th) anniversary with the City or completion of fifteen (15) years of full-time law enforcement experience, Officers will receive a two percent (2%) increase on their annual base salary. Officers must receive a satisfactory performance evaluation annually to be eligible for Senior Officer Pay.

Section 5. All full time job assignments under Section 2 above, excluding the Officer-in-Charge, shall start at the beginning of a pay period and terminate at the end of a pay period. All premiums, excluding the Officer-in-Charge premium, shall not be paid for any full time job assignment under Section 2 above that is less than an entire pay period.

ARTICLE 20 – INSURANCE

Section 1. Effective January 1, 2015, the City will provide group medical, dental, vision, and life insurance programs for all regular full-time employees according to each program's eligibility requirements. The City will pay 90% of the PPO Plan group medical, dental, vision premium cost for regular full time employees and their dependents. Employees electing alternative plan options made available by the City may apply these contribution amounts toward such coverage and are responsible for any remaining premium costs. Any premium costs not covered by the City shall be paid by the enrolled employee through automatic payroll deduction. The terms, conditions, and extent of the City's group insurance programs may be modified or canceled at any time by action of the City Council or the insuring agency.

Section 2. During the term of this Agreement, the City will provide group term life insurance and accidental death and dismemberment for each regular, full time employee at one and one-half (1 ½) times the employee's annual salary, \$75,000 maximum. The City will also provide \$2,000 life insurance coverage for dependents.

Section 3. The City shall provide a program of long term disability insurance for all bargaining unit members at 50% of monthly salary up to a maximum monthly benefit of \$3,000. Premium for the plan are paid 50% by the City and 50% by the employee.

Section 4. An optional accidental death and dismemberment plan for all regular, full time employees shall be offered by the City which is equivalent to the current Transamerica AD&D plan. Premiums for this plan will be paid for by the employee.

Section 5. The City shall provide to employees in the bargaining unit an Internal Revenue Code Section 125 Flexible Spending Plan with pre-tax health and dependent benefits.

Section 6. The group medical, dental, and vision insurance coverage provided in Section 1 above will be subject to annual review and recommendations by an insurance benefit committee consisting of an equal number of represented and non-represented committee members.

ARTICLE 21 – TORT CLAIMS LIABILITY

Section 1. The City shall indemnify and defend employees of the City’s Department against claims and judgments incurred in, or arising out of, the performance of their official duties, subject to the limitations of the Oregon Tort Claims Act, ORS 30.260 to ORS 30.300.

ARTICLE 22 – RETIREMENT

Section 1. The City shall provide for participation in the Public Employees Retirement System (PERS) for all eligible employees as provided for under the rules and regulations of that system. The City shall pay the cost of the employee’s contribution to PERS (PERS pickup).

For employees not eligible to participate in PERS, the City shall participate in the Oregon Public Service Retirement Plan (OPSRP) and pay an amount equal to six percent (6%) of the employee’s monthly salary, not to be deducted from the salary, as the employee’s contribution to the employee’s account when the employee becomes a member of the Individual Account Program.

ARTICLE 23 – PAID TIME OFF

Section 1. The City shall provide a program of earned time off for regular full- and part- time employees, which can be used to meet the employees’ needs or desires for paid time off from work. The Paid Time Off (PTO) Program is a consolidation of, and in lieu of, sick leave, paid holidays and vacation leave.

Section 2. PTO Accrual. PTO accrual rates are determined by a regular employee’s length of continuous service with the City. Full-time employees shall accrue PTO each pay period at the following rate:

Years of Continuous Service	Accrual Rate per Pay Period (two weeks)	Yearly Accrual Rate
<3 years	7.38 hours	192 hours
=>3 years	8.00 hours	208 hours
=>6 years	8.62 hours	224 hours
=>9 years	9.23 hours	240 hours
=>12 years	9.85 hours	256 hours
=>15 years	10.46 hours	272 hours

Part-time employees shall accrue PTO at a prorated rate of full-time employees.

Section 3. Sick Leave Accrual. In addition to PTO accrual in Section 2 above, full-time employees shall accrue an additional twelve (12) days of Sick Leave per year which may only be used for absences resulting from injury or illness in excess of one (1) day or emergency leave as outlined in Article 28, Section 1, unless the employee provides notice from a health care provider justifying the need for the leave, in which case an employee may access Sick Leave accrual immediately. Part-time employees shall accrue Sick Leave at a prorated rate of full-time employees.

Section 4. Probationary Employees. PTO and Sick Leave accrued during the first six (6) months of continuous service shall not be credited as earned PTO and Sick Leave until the employee completes the first six (6) months of continuous service.

Section 5. Maximum Accrual. PTO and Sick Leave benefits which are earned may be accrued to a maximum of one times the employee's annual accrual rate. Employees will not accrue or be paid for any PTO or Sick Leave in excess of one times the employees' annual accrual rate. However, the City may approve temporary accruals and carry-overs of more than the maximum allowable amount when the employee is unable to take time off due to City staffing and work load requirements, or other legitimate reasons that make use of accrued paid time off benefits unfeasible. Sick Leave will be accrued in a separate bank and employees will not accrue or be paid any Sick Leave in excess of seven hundred twenty (720) hours.

Section 6. Procedure for Use of PTO.

- A. Requests for time off submitted at the time of shift bid shall be granted on a seniority basis. Such requests may not exceed three weeks per shift bid per employee. Of those three weeks, up to one week may be taken in daily increments, with the remainder being taken only on a full workweek basis.
- B. To schedule vacations or days off other than for illness or injury, and other than requests submitted at shift bid an employee must submit a written request to the immediate supervisor at least one (1) week in advance. All such requests will be granted on a “first come, first served” basis, after all shift bid requests have been scheduled. If two or more time off requests are received at the same time, then resolution of the conflicting time off requests shall be based on seniority. A PTO leave request, except in emergency situations, should be made at least one (1) week in advance. The immediate supervisor shall respond with approval or denial within one (1) week of receipt of the request. Requests may be denied based upon staffing and workload requirements of the City. Approval of requests will not be unreasonably withheld.
- C. For illness or injury, the employee must notify the immediate supervisor as soon as possible. If the illness extends beyond one (1) day, daily calls must be made to keep the supervisor informed, unless otherwise arranged between the supervisor and the employee.
- D. Employees must indicate in writing the number of PTO and Sick Leave hours for which payment is requested. The combined total of hours worked and paid leave, such as PTO and Sick Leave cannot exceed forty (40) hours in a workweek.

Section 7. CashOut. Regular employees shall be paid in one (1) lump sum for any accrued but unused PTO only upon layoff, resignation, or dismissal, unless the employee fails to provide the required notice, if any. In addition, between October 1 and 30, and April 1 and 30, of each calendar year during the term of this Agreement a regular City employee may request in writing a “cashout” of up to eighty (80) hours of PTO each calendar year. The City must approve any such PTO “cash-outs” in writing, and may disallow or reduce the “cash-out” based on the ability of City finances to absorb the costs of such. Employees will not be entitled to cash out Sick Leave at any time. Approval of such requests for PTO “cashout” shall not be unreasonably withheld. Any PTO “cashout” under this Section will be paid as part of the second payroll check in November and May of each year during the term of this Agreement.

Section 8. Concurrent Leaves. If the leave is for a qualified state or federal family leave purpose, all leaves of absence, no matter how classified, shall be granted against the employee’s annual family leave entitlement. In such case, the

employee, upon request, shall provide health certification, including second and third opinions and fitness for duty certification as provided by family leave laws.

Section 9. An employee who is required to work during any of the holidays listed below shall be paid at one and one-half times the employee's regular rate of pay for work performed on such holiday and two and one quarter (2.25) their regular rate of pay if the employee works holiday overtime (defined as hours in excess of the employee's regularly-scheduled shift that occurs during the 24-hour period from 12:00 a.m. to 11:59 p.m. on the following holidays):

New Year's Day	January 1
Martin Luther King Jr. Day	Third Monday in January
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday Following Thanksgiving	Fourth Friday in November
Christmas Day	December 25

Section 10. When an employee is absent from work because of an on-the-job injury, time off will not be charged to Sick Leave except as provided below. The employee may select one of the following options:

- A. The employee may elect to receive only his/her workers' compensation payments.
- B. The employee may voluntarily turn in his/her first and all subsequent workers' compensation payments and will, in turn, receive his/her regular gross wages and benefits, and the following will occur:
 - (1) Employees shall use available Sick Leave for integration with their workers' compensation payments in order to receive their regular gross wages. In this situation a check for full gross wages will only be received if the employee has available Sick Leave. Deduction to sick leave shall be proportional to the difference between the workers' compensation payments and regular gross wages.

(2) In the event an employee withholds any of his/her workers' compensation payments, compensation will fall into the integration of Sick Leave formula described above from the first day of injury. In the event this occurs, the City can automatically deduct any overpayment in full from the employee's next pay check, or any subsequent checks if there is not a sufficient amount in the next pay check.

ARTICLE 24 – OTHER LEAVES

Section 1. Bereavement Leave. Bereavement leave shall be granted in accordance with state law and City policy. Employees shall be required to use accrued PTO, vacation and sick leave before taking any unpaid bereavement leave.

“Immediate family” for purposes of this section is defined as spouse, registered same-sex domestic partner, children, grandchildren, parents, grandparents, brother, sister, mother-in-law, father-in-law, sister-in-law or brother-in-law, or any relative residing in the employee's immediate household.

Section 2. Military Leave. Military leave shall be granted in accordance with state and federal law and City Policy.

Section 3. Jury/Witness Leave. If an employee is called for jury duty or is subpoenaed as a witness in a matter which is not personal to the employee, the employee shall be granted leave with pay. Compensation received (excluding travel reimbursement) shall be remitted to the City. Upon being excused from such duty for a portion of any day, the employee shall immediately contact their supervisor, who at the supervisor's discretion may assign the employee for the remainder of their regular working day.

Section 4. Family Medical Leave. Family medical leave shall be granted in accordance with state and federal law, and City policy.

Section 5. Leave Without Pay.

- A. Generally. Leave without pay may be granted to any regular employee by the City Manager or his designee for any period of time up to one hundred eighty (180) days for personal, professional, or family reasons, or for time beyond the medically certified period of temporary disability following childbirth. The City Manager or his designee shall have the discretion to grant leaves without pay for other reasons consistent with the best business interest of the City. Temporary employees shall not be granted leave without pay.
- B. Authorization. All leave without pay must be requested by the regular employee in writing as soon as the need for such a leave is known. All written requests shall state the reason for the leave and

the amount of leave time needed. Written requests shall be submitted to the Police Chief, and referred to the City Manager with the Police Chief's recommendation. All leave without pay shall be approved in writing by the City Manager setting out the terms, conditions, and length of said leave. The City Manager has the discretion to reduce or deny the leave without pay request when the reduction or denial is in the best business interest of the City.

- C. Return to Work. Unless otherwise approved by the Police Chief or his/her designee after giving due consideration to extenuating circumstances, failure to return from any leave without pay on or before a designated date, will be considered a voluntary resignation and cause for denying re-employment with the City. Employees on leave without pay may return to work early, provided notice is given to the Police Chief at least five (5) regular City workdays in advance.
- D. Benefits. PTO and Disability PTO are not earned while an employee is on leave without pay. The City will not pay any portion of the employee's group medical and life insurance premiums while the employee is on leave without pay, though the employee may elect to personally continue such coverage as provided under the terms of such policies. At the City Manager's discretion, an employee may be required to use any earned but unused vacation and holiday benefits before a leave without pay is granted.
- E. Re-employment. Employees returning from an approved leave without pay are entitled to return to their same position or a similar position in the same class and pay step. Provided, however, if the employee's anniversary date of employment fell during a leave without pay period, the employee's anniversary date shall be extended until the employee has returned to work and completed as many days of continuous employment as the length of leave without pay period.
- F. Certificates. Employees who are granted a leave without pay for medical or disability reasons must exhaust all accrued PTO and Disability PTO prior to commencing leave without pay. Any employee returning from a leave without pay due to medical or disability reasons must provide a qualified health care provider's certification of the employee's ability to return to work. If the employee was placed on leave without pay status pursuant to the determination of a health care provider, the certificate shall, if possible, be from the health care provider who previously examined the employee.

Section 6. Administration of Leave Requests. The following provisions will apply to the administration of all leave requests under this article unless otherwise indicated.

- A. Eligibility for Leave. Regular full or part-time employees will become eligible for leave under this article when they have been employed for at least one hundred eighty (180) calendar days before the first day of leave.
- B. Notice of Leave. Unless otherwise required by law, employees must provide thirty (30) days advance notice if the leave is foreseeable. If the reason for the leave is unforeseeable, notice of such leave must be provided as soon as the employee learns of the need for leave. At a minimum, employees must give the City oral notice within twenty-four (24) hours of the commencement of the leave and must provide written notice within three (3) days after the employee returns to work. Failure to give the requisite notice may be cause for reduction of the employee's leave and discipline when the law permits. In the case of a medically related leave of absence, the notice should include the health condition of the person needing care, the relationship of the employee to the person needing care (if other than the employee), the anticipated length of the leave and the availability of other family members to provide care.
- C. Certification. The City may require an employee to provide certification from the employee's health care provider to support a leave of absence request under this article, to the extent allowed by law. Where the need for leave is anticipated, the employee must provide the certification in advance of the leave, when possible (although certification is not required for parental leave, the employee may be required to provide documents evidencing birth, adoption or foster placement). Where the need for the leave is not anticipated, an employee must provide certification within fifteen (15) days of the City's request for such certification. In some cases, the City may require a second or third opinion (not for leave to care for sick child), at the City's expense. If an employee requests a family medical leave for the employee's own serious health condition, the employee will also be required to furnish a certification (fitness-for-duty certification) from the employee's health care provider at least three (3) working days before returning to work.
- D. Benefit Status During Leave. Unless otherwise indicated, leaves under this article are unpaid. However, employees on an unpaid family medical leave shall be entitled to use accrued vacation, sick

leave, and compensatory leave, but shall not be required to do so. Leave shall not continue to accrue for any period in which the employee is on unpaid leave status. If an employee's probationary period is interrupted by a leave under this article, it shall resume upon the employee's return to work.

For employees on a family medical leave who are otherwise qualified for employee benefits, the City will continue employee benefits, including group medical insurance, for the period of leave required by law, provided the employee pays his/her portion of the premiums. Employees will be asked to authorize payroll deductions for any employee contributions for benefits while they are on leave. In certain situations, the City reserves the right to recover any premiums paid on behalf of an employee for group medical insurance during the leave. For example, if an employee decides not to return to work after a leave for reasons other than a serious medical condition or circumstances beyond the employee's control, the City reserves the right to recover those premiums paid for such benefits on the employee's behalf during the unpaid leave.

- E. Twelve (12) Month Period. Generally, the twelve (12) month period during which family medical leave is available will start with the first day of the first leave taken by the employee. A second twelve (12) month period will commence with the first day of the first leave taken by the employee following the initial twelve (12) month period and so forth.
- F. Reinstatement. At the conclusion of the leave, an employee will be reinstated to the employee's former job. If the employee's former job has been eliminated, he or she will be entitled to be reinstated to an available equivalent position. Employees must promptly return to work when the circumstances which necessitate their leave end. If circumstances change during the leave and the necessary leave period is shorter than originally expected, the employee must give the City reasonable notice (i.e., within two (2) business days) of the changed circumstances where foreseeable and request reinstatement. With the exceptions of employees who are off work as the result of industrial injury or illness, employees lose their reinstatement rights when the period of leave exceeds the maximum allowed.
- G. Leave requests will be administered in accordance with any applicable federal or state laws. Leaves under this Article will run concurrently where permitted by law.

ARTICLE 25 – UNIFORMS

Section 1. If an employee is required to wear a uniform or carry equipment, such uniform and/or equipment shall be furnished by the City. The employee shall make restitution to the City for loss or damage to any City supplied uniform unless such loss or damage occurred in the line of duty and was not caused by negligence on the part of the employee. Proper maintenance of a required uniform and equipment is the responsibility of the employee. The City will provide cleaning service for up to two City-issued uniforms per week and cleaning service for detectives' court attire as needed.

The City shall provide newly hired officers with a footwear allowance in the amount of two-hundred dollars (\$200). Furthermore, the City shall provide a reimbursement of up to two-hundred dollars (\$200) every two (2) years for the receipted purchase/repair/replacement of footwear in order to maintain appropriate function at the Chief of Police's discretion. Proper maintenance of the appearance of footwear is the responsibility of the officer.

Section 2. Subject to approval by the Police Chief, an employee may be authorized to substitute personal equipment for the equipment furnished by the City. However, the City shall not be responsible for an employee's personal property if loss or damage occurs in the line of duty when City furnished equipment is available.

Section 3. Employees assigned as a regular detective shall receive an annual clothing allowance of up to seven -hundred dollars (\$700) for the receipted purchase of clothing for work. Detectives shall be expected to maintain an appearance appropriate to their assignment, as determined by the Chief of Police.

ARTICLE 26 – TRAINING

Section 1. Mandatory Training. When an employee is assigned to attend a training activity, the following shall apply:

1. All receipted course registration fees, tuition, and other out-of-pocket expenses shall be reimbursed by the City. All textbooks and other literature received as a result of taking the training shall be the property of the City.
2. All mileage and per diem shall be reimbursed in accordance with this agreement.
3. All time required for travel and course attendance shall be paid at the employee's regular or overtime rate, as applicable.

Section 2. Voluntary Training. Training to which an employee is not specifically assigned pursuant to Section 1 above, shall be designated as voluntary training. Such training may occur on paid or non-paid time or a combination thereof and may be with full, partial, or no reimbursement of expenses. At the time that a training request is approved, the Department shall specify whether the training is considered to be voluntary or assigned and, if voluntary, the specified expenses, if any, that the City will reimburse and the paid time, if any, that the City will grant.

Section 3. The City shall provide an opportunity for each employee to receive all training hours required by DPSST for the maintenance of the employee's certificate. Such training shall be considered mandatory training.

ARTICLE 27 – BUSINESS TRAVEL

Section 1. Mileage Reimbursement. Whenever an employee is authorized to use his/her personal vehicle in performance of official City duties, he/she shall be compensated at the standard IRS-allowed rate.

Section 2. Expenses. An employee traveling on authorized City business (excluding Association business and training under Article 7, Section 7) shall receive per diem for meals (according to the applicable GSA rate) and mileage (according to the applicable IRS rate). Lodging and airfare will be paid for by the City.

ARTICLE 28 – OUTSIDE EMPLOYMENT

Employees wishing to engage in off-duty employment with another employer must obtain the approval of the Chief of Police and the City Manager. Such approval shall not be unreasonably withheld.

ARTICLE 29 – MISCELLANEOUS

Section 1. General and Special Orders. The City shall furnish the Association with copies of all policies and orders in effect as of the signing of this agreement and shall provide the Association with all additional policies and orders promulgated during the term of this agreement.

Section 2. Use of Force Situations. The parties agree that the Washington County Use of Deadly Physical Force by a Police Officer Plan has been approved by the City Council and that it will control situations to which it applies. The parties further agree that the Plan provides for an administrative protocol to be followed in the event of use of deadly physical force by a police officer and that any alleged violations of the Plan by the City will be handled in accordance with the Plan and/or SB 111, and will not be subject to the grievance procedure.

Employees involved in the use of deadly force, as defined by the Sherwood Police Department policy manual, shall be advised of their rights to, and allowed to consult with, an Association representative or attorney prior to being required to give an oral or written statement about the use of force. Such right to consult with a representative or with counsel shall not unduly delay the giving of the statement; however, the officer shall be required to provide immediate, on-scene information such as the status of the incident and the location of a suspect.

All employees involved in the use of deadly force or a traumatic incident, as determined by the Chief of Policy or the Association, shall be required to meet with a psychologist/counselor, at the City's expense, for the purpose of debriefing. The employee shall be allowed to choose the psychologist/counselor he/she wants to visit from a list of licensed psychologists/counselors mutually agreed upon between the City and the Association. The employee shall notify the City of his/her choice. Debriefing by a chaplain is not considered counseling by a licensed psychologist/counselor. These meetings shall be covered by the psychotherapist/patient privilege and information disclosed in these meetings shall not be attainable or useable by the City for any purpose.

Section 3. Written Record of Complaint. It is agreed that no member of the bargaining unit will be required to write a report to the Employer on any complaint against them (by persons in or outside of the Police Department) unless said complaint is signed and dated in written form by either the complainant or the officer taking the complaint. Prior to any written report being required of any employee, they will be furnished a copy of said signed complaint.

Section 4. Fitness Incentive. The City has implemented a fitness incentive for any officer who passes ORPAT. The parties have agreed to the parameters of the program to implement this incentive, which are provided in Appendix C.

ARTICLE 30 – PERSONNEL FILES

Section 1. Content. Personnel records maintained on Police Department employees may include, but are not necessarily limited to, a list of the positions held and compensation received, performance evaluations, and special commendations or awards relating to job performance, notes regarding any disciplinary action(s) or other counseling sessions, and records regarding the payment or administration of benefits. Personnel records will be maintained by the City Manager or his/her designee. All employees, including those on leave without pay status, are required to keep the City informed of their current home address at all times.

Section 2. Confidentiality. An employee's personnel records are confidential, except as provided by law. Only the employee, a representative of the employee with written permission of the employee, the employee's immediate supervisor, the

Police Chief, and the City Manager, or other personnel authorized by the City Manager, may examine an employee's confidential personnel records. Confidential personnel records shall not be released to any unauthorized individuals except with the written consent of the employee. No documents shall be removed from an employee's personnel file without the City Manager's approval, provided, however, employees have the right to inspect and to copy documents from their own personnel file at any time, subject to notification of the City Manager. Authorized inspections shall take place in the presence of the City Manager or the Director of Finance.

Section 3. Response to Disciplinary Material. A copy of any written disciplinary document placed in an employee's personnel file which the employee has not already received shall be furnished to the employee within seven (7) calendar days after it is placed in the personnel file. The employee may respond in writing, within (30) calendar days, to any information in such document with which the employee disagrees, and such response shall be placed in the employee's personnel file. Materials received prior to the date of employment with the City shall not be subject to the provisions of this Article.

Section 4. Removal From File. Upon written request by an employee, all letters of warning and reprimands will be removed from Association member's personnel files at the time prescribed by OAR 166-200-0090(6) and (7), unless other similar discipline has been received by the employee within the applicable period.

ARTICLE 31 – FUNDING CLAUSE

Section 1. The City agrees to include moneys necessary to fund this Agreement in its General Fund budget. However, the City makes no guarantee or representations as to passage, voter approval, or level of employment within the department.

ARTICLE 32 – SAVINGS CLAUSE

Section 1. Should any portion of this Agreement or supplement thereto be finally adjudged by the Supreme Court, or other court of appropriate jurisdiction, to be in violation of any state or federal law, then such portion or portions shall become null and void, and the balance of this Agreement remains in effect. Both parties agree to immediately renegotiate any part of this Agreement found to be in such violation by the court, and to bring it into conformance. The parties agree that the labor agreement will not serve to restrict the City's obligation to comply with the federal and state law concerning its duty to accommodate individuals with disabilities.

ARTICLE 33 – CLOSURE

Section 1. Pursuant to their statutory obligations to bargain in good faith, the City and the Association have met in full and free discussion concerning matters of

employment relations as defined by ORS 243.650 (et. seq.). This contract incorporates the sole and complete agreement between the City and the Sherwood Police Officers' Association resulting from these negotiations.

Section 2. This Agreement is subject to amendment, alteration or addition only by subsequent written agreement between, and executed by, the City and Sherwood Police Officers' Association where mutually agreeable.

ARTICLE 34 – TERM OF AGREEMENT

Section 1. This agreement shall be effective upon execution, and shall remain in full force and effect until June 30, 2017, and shall continue in effect during the period of negotiations until a successor agreement is reached.

Section 2. This agreement shall automatically be renewed from year to year thereafter unless either party shall notify the other, in writing, by December 1, 2016, that it wishes to modify the Agreement.

**FOR THE SHERWOOD POLICE
OFFICERS' ASSOCIATION**

**FOR THE CITY OF
SHERWOOD**

Randy Johnson
Association President

Joseph Gall
City Manager

Date

Date

Association Vice-President

Tom Pessemier
Assistant City Manager

Date

Date

APPENDIX A

EFFECTIVE July 1, 2014*:

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6					
\$4,410	\$4,630	4,862	5,105	5,360	5,628					

***For employees who were employed with the City upon execution of this Agreement.**

APPENDIX B

INTERNAL INVESTIGATION PROCEDURES

INVOLVING DISCIPLINE OF AN ECONOMIC NATURE

A. Definition.

For purposes of these procedures, “Discipline of an Economic Nature” is defined as a suspension, reduction in pay or benefits, demotion or dismissal.

B. Advance Notice.

Prior to any internal investigation which could result in discipline of an economic nature, the employee concerned shall be notified not less than twenty-four (24) hours before the interview or such time as written reports are required, except when, in the opinion of the City, a delay will jeopardize the success of the investigation or when criminal conduct is at issue. An employee may voluntarily waive the above twenty-four hour (24-hour) notice. The notice shall include the specific reasons for the interview, a statement of whether the employee is a witness or a suspect, and any other information necessary to reasonably inform him/her of the nature of the investigation. Upon request, the employee shall be afforded an opportunity and facilities, subject only to scheduling limitation, to contact and consult privately with an attorney and/or a representative of the Association.

C. The Interview.

1. The interview shall be conducted in the Department Office unless mutual agreement of the parties or the particular circumstances of the situation require another location.
2. Any interview of an employee normally shall be when he/she is on duty, unless the serious nature of the investigation dictates otherwise.
3. Parties to the interview shall be limited to those reasonably necessary to conduct a thorough and fair investigation. The employee shall be informed as to the name, rank and command, or other similar information of all persons present, if they are unknown to him/her, and may have an Association or other representative present to witness the interview and assist him/her.
4. The interview shall be limited in scope to acts, events, circumstances and conduct which pertain to the subject investigation and shall be conducted in a manner devoid of intimidation, abuse or coercion. The employee shall be granted reasonable rest periods, with one (1) intermission

every hour if so requested. Interviews exceeding two (2) hours shall be continued only by mutual consent.

5. If the interview is recorded, the employee shall be provided with a copy of the recording upon request, or he/she may record the interview himself/herself at his/her own expense, and the City shall be provided with a copy. If any portion of the recording is transcribed, the employee shall be given a copy. Interview proceedings shall be kept strictly confidential by all concerned.

6. The employee may be required to answer any questions involving criminal or non-criminal matters under investigation and will be afforded all rights and privileges to which they are entitled under the laws of the State of Oregon or the United States of America.

D. Investigation Findings:

If the City determines that discipline of an economic nature will be imposed, the employee will be furnished with a copy of all the reports of the investigation. The employee shall have ten (10) days from receipt of the investigative summary to respond to the proposed discipline, either in writing or in person, as to why the proposed discipline would be inappropriate.”

APPENDIX C

Relating to Article 29 section 4 of the Collective Bargaining Agreement

Recognizing that physical fitness is beneficial to the health and wellbeing of Employees, in addition to lowering the potential costs of healthcare and work related injuries, a physical fitness incentive was established beginning July 1, 2011. Employees will be provided the opportunity to participate in the DPSST certified ORPAT course twice per fiscal year. Scheduling of this testing shall be determined by the Chief of Police or his/her designee, and will allow for make-up tests as described herein.

Recognizing that participation in this incentive program is purely voluntary, all ORPAT testing will be done twice each fiscal year and on duty. Employees will be paid for the actual time spent participating in the ORPAT testing, up to a maximum of ninety (90) minutes. The City will provide the location and all testing equipment, including a certified ORPAT instructor to facilitate the testing.

Prior to participating in the fitness incentive, employees will be required to sign a waiver indicating they understand the physical challenges of ORPAT and the risks of participating. If at any time, in the opinion of the ORPAT instructor or on scene supervisor, the employee appears to be in physical distress, the testing will be stopped.

Between July 1, 2014 and June 30, 2015, those Employees who successfully complete the ORPAT as prescribed below will receive the associated fitness incentive (All times listed are in minutes):

Completion Time	Fitness Incentive
4:00 or less	\$850.00
4:01 through 4:45	\$700.00
4:46 through 5:30	\$500.00
5:31 through 6:15	\$350.00
6:16 through 7:00	\$200.00

Effective July 1, 2015, those Employees who successfully complete the ORPAT as prescribed below will receive the associated fitness incentive (All times listed are in minutes):

Completion Time	Fitness Incentive First Testing	Fitness Incentive Second Testing
4:00 or less	\$425	\$425
4:01 through 4:45	\$350	\$350
4:46 through 5:30	\$250	\$250
5:31 through 6:15	\$175	\$175
6:16 through 7:00	\$100	\$100

The parties recognize that the City will include payment of any earned fitness incentive in a regular payroll check, and will reflect any and all amounts paid as allowances, bonuses, and/or incentives as subject to the IRS and Oregon payroll tax deductions.

If an Employee fails to pass the ORPAT, he/she must wait for the next annual opportunity.

If an Employee is unable to participate in the scheduled ORPAT test due to vacation, court, bona-fide illness or injury or other reasonable conflict, the Employee may request a make-up test without penalty so long as the make-up test is completed and passed within a mutually agreed time frame between the Employee and the Chief of Police, or his/her designee.

Reasonable efforts shall be taken to complete the make-up test within (3) months of the originally missed scheduled test.

Employees who choose not to participate, or who participate but do not satisfactorily complete the ORPAT as defined-in this agreement, will not be negatively impacted.

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**LETTER OF AGREEMENT
BETWEEN
THE CITY OF SHERWOOD
AND
THE SHERWOOD POLICE OFFICERS ASSOCIATION**

The City of Sherwood (the City) and the Sherwood Police Officers Association (the Association) have reached the following agreement.

1. The City and the Association have agreed to a new bidding procedure in Article 11, Section 2, of the new collective bargaining agreement. As a result, the City and the Association agree that shift assignments and days off that are effective October 1, 2014, will continue through January 31, 2015.

The City and the Association further agree that employees may request vacation from the effective date of the new collective bargaining agreement through January 31, 2015, according to the procedures in Article 11, Section 2 Seniority, and Article 23, Section 6 of the new collective bargaining agreement. However, any request for seniority vacation that is granted between the effective date of the new collective bargaining agreement through January 31, 2015, will be credited towards the amount of seniority vacation an employee may take under Article 11, Section 2 and Article 23, Section 6 of the new collective bargaining agreement.

2. The City and the Association agree that the following three officers will be paid the following monthly salaries effective July 1, 2014:

Kristofer Asla – \$4,741.00
George Lopez – \$4,513.00
Joseph Twigg – \$4,741.00

The parties further agree that these three officers will be paid the following monthly salaries on their next anniversary dates:

Kristofer Asla – \$5,105.00 (anniversary date is December 13, 2014)
George Lopez – \$4,862.00 (anniversary date is January 1, 2015)
Joseph Twigg – \$5,105.00 (anniversary date is November 9, 2014)

During the term of the new collective bargaining agreement, for anniversary dates following the ones identified above, Officers Asla, Lopez and Twigg will be eligible for step increases according to the terms of Article 12, Section 3.

City of Sherwood

Sherwood Police Officers Association

Date: _____

Date: _____

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Agenda Item: New Business

TO: Sherwood City Council

FROM: Brad Kilby, Planning Manager
Through: Julia Hajduk, Community Development Director and Joseph Gall, ICMA-CM, City Manager

SUBJECT: Resolution 2014-065 authorizing the City Manager to sign a contract with Cogan Owens Cogan for the Sherwood West Concept Plan project

Issue:

Shall the City Council authorize the City Manager to sign a contract with Cogan Owens Cogan to prepare a concept plan for the urban reserve areas west of Sherwood and conduct a housing needs analysis?

Background:

The City received a \$221,139 Construction Excise Tax (CET) grant from Metro in August 2013. The grant funds a concept plan intended to address transportation, utilities, land uses, natural resources, and capital facilities for the 1,291 acre urban reserve area west of Sherwood. In July, the City Council approved a resolution that allowed the City Manager to enter into an Intergovernmental Agreement (IGA) with Metro to authorize the work. The City then issued a request for proposals (RFP) from qualified firms to assist City staff in performing the work. Cogan Owens Cogan along with a small team of sub-consultants submitted an RFP that met the criteria laid out in that request, were interviewed to ensure that they would be the best team for the job, and have entered into scope negotiations with City staff.

As the City embarks on this planning effort, it is important to remember that this concept area has not been brought into the urban growth boundary and the proposed work will help inform future urban growth boundary decisions by identifying the community's vision and aspirations for the area rather than simply responding to conditions imposed as part of the growth boundary decision.

As a result, the concept plan will also include a phasing strategy to ensure that the right areas are considered for inclusion in the Urban Growth Boundary (UGB) in a manner that encourages development patterns that are orderly, efficient, and can be sustained by the City of Sherwood Operations. The consultant's proposal also includes the preparation of a preliminary housing needs analysis for the entire City.

Approval of the resolution will authorize the City Manager to enter into final contract negotiations with Cogan Owens Cogan. While the contract details have not been finalized as of the date of this staff report, the draft scope and schedule are attached to the staff report for Council reference and the final contract amount will not exceed \$210,000.

Financial Impacts:

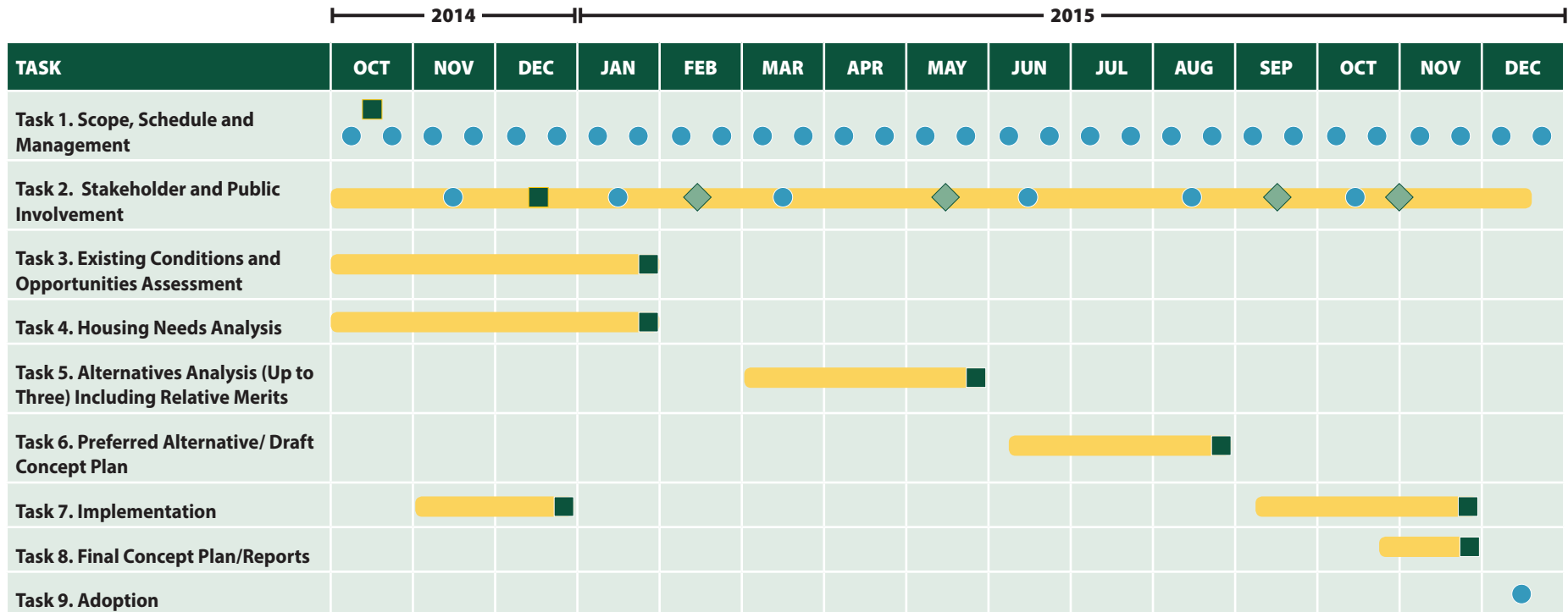
The funds from this grant and costs for consultants were included in the adopted FY14-15 budget. The consultant proposal came in slightly higher than originally anticipated but is still within the amount budgeted for professional services this fiscal year.

Recommendation:

Staff respectfully requests City Council adoption of Resolution 2014-065 authorizing the City Manager to sign a contract with Cogan Owens Cogan to assist staff in preparing the Sherwood West Concept Plan.



Preliminary Project Schedule – Sherwood West Concept Plan



- Stakeholder and Technical Advisory Meetings
- Deliverable
- ◆ Public Event/Web-based Survey



RESOLUTION 2014-065

AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH COGAN OWENS COGAN TO CONCEPT PLAN THE URBAN RESERVE AREAS WEST OF THE EXISTING CITY OF SHERWOOD URBAN GROWTH BOUNDARY (UGB) AND CONDUCT A CITY WIDE HOUSING NEEDS ANALYSIS

WHEREAS, Metro has established a Construction Excise Tax (CET) which imposes an excise tax throughout the Metro region to help fund regional and local planning necessary to make land ready for development after inclusion into the Urban Growth Boundary (UGB); and

WHEREAS, the City of Sherwood applied for a Community Planning and Development Grant from Metro to prepare a concept plan for approximately 1,291 acres in Urban Reserve Area 5B; and

WHEREAS, Metro awarded the City of Sherwood the requested grant in the amount of \$221,139; and

WHEREAS, in July of 2014, the City of Sherwood and Metro entered into an Intergovernmental Agreement (IGA) that outlines each party's responsibility and commitments and identifies a set of deliverables and milestones that are in line with the City's request; and

WHEREAS, the adopted FY14-15 budget allocated \$215,000 for professional services which was intended to fund the necessary consultant work for this project, including \$30,000 for a housing needs analysis; and

WHEREAS, in August 2014, the City issued a Request for Proposal (RFP) for interested firms to submit their qualifications to work on the project; and

WHEREAS, Cogan Owens Cogan submitted a proposal that meets the City's needs; and

WHEREAS, after review of the proposal and an interview of the consultant, it was determined that Cogan Owens Cogan is well qualified to complete the work and the proposal reflected a good understanding of the project and community needs.

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

Section 1. The Sherwood City Council hereby authorizes the City Manager to sign a contract with Cogan Owens and Cogan to perform the work necessary to prepare a concept plan for Urban Reserve Area 5B, and a housing needs analysis for the entire City of Sherwood for an amount not to exceed \$210,000.

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

Duly passed by the City Council this 7th day of October 2014.

Bill Middleton, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder
Resolution 2014-065
October 7, 2014
Page 1 of 1

TO: Sherwood City Council

FROM: Joseph Gall, ICMA-CM, City Manager
Through: Chris Crean, City Attorney

SUBJECT: Ordinance 2014-019, Establishing a Tax on the Sale of Marijuana and Marijuana-Infused Products in the City of Sherwood and Adding a New Chapter 3.25 to the Municipal Code

Issue:

Should the City of Sherwood establish a tax on the sale of marijuana and marijuana-infused products?

Background:

Voters in Oregon legalized medical marijuana through the initiative process in 1999, after which medical marijuana dispensaries began operation. These dispensaries essentially served as intermediaries between marijuana growers and medical marijuana patients. While these dispensaries were legal, they were unregulated and the source of controversy in many communities. In 2013, the Oregon Legislature passed House Bill 3460 which created a regulatory and licensing regimen for medical marijuana dispensaries. As of now, there are 198 approved and 115 provisionally approved dispensaries in Oregon. As a reminder, the City of Sherwood prohibited siting medical marijuana dispensaries in Sherwood until May 2015.

Oregon Ballot Measure 91 qualified for the November 2014 general election. Measure 91 proposes a state law "legalizing the recreational use of marijuana, based on regulation and taxation to be determined by the Oregon Liquor Control Commission." This measure is similar to a measure approved by voters in Washington in 2012.

Ordinance 2014-019 would establish a gross receipts tax that is applied to the total gross taxable revenues of a business that sells marijuana or marijuana-infused products. It is similar to a sales tax receipt that is levied on the seller rather than the purchaser. The seller is responsible for maintaining accurate records of its gross revenues from taxable goods and remitting a percentage to the taxing entity. Many businesses that are subject to a gross receipts tax will show the tax on the bill of sale they present to the customer, but it is nonetheless the business that is responsible for paying it. A gross receipts tax is similar to a franchise fee, and has the administrative advantages to be easy to collect and easy to audit.

The ordinance presented does not tax growers and processors for several reasons. First, under Oregon law, growers and grow sites must register with the state, but their locations and identities are confidential. This could lead to difficulties in identifying those subject to tax. Next, staff has no

experience with administering a value added tax, which is essentially what this would be, and is reluctant to even attempt to create the administrative structure for such a tax. Third, we have no models that we could adapt in order to create a value added tax. The State of Washington's new marijuana law provides for a 25% excise tax at each transaction point (producer to processor, processor to retailer and retailer to consumer) but, at this time, Washington has not adopted rules or procedures for administering the tax. Finally, all taxes – regardless of where they are assessed in the supply chain – are ultimately passed on to the consumer. Therefore, the gross receipts of a business would reflect all of the costs incurred along the supply chain and a gross receipts tax would capture tax revenue from each of those elements. How to disperse that tax liability within the supply chain would be left to the growers, processors and retailers, rather than to the City.

While Oregon law does not currently prohibit Sherwood from taxing marijuana, Measure 91 does contain the following language:

“SECTION 42. State has exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.”

Because this language does not specifically repeal a local marijuana tax in effect at the time of the measure's passage, and because this language can be interpreted to read “No county or city of this state shall [after the effective date of this measure] impose any fee or tax...” it can be argued that this language does not pre-empt a city tax that is enacted prior to the effective date of Measure 91. Alternatively, the language can be read as “No county or city of this state shall [be allowed at any time to] impose any fee or tax...”

Accordingly, until such time as a court rules on whether the measure applies retroactively to prohibit a local tax enacted prior to the date the measure is passed, there is no guarantee that a local tax imposed prior to passage would survive beyond the effective date of the initiative, unless this language is modified by the State Legislature.

Financial Impacts:

At this time, the fiscal impacts of this ordinance are unknown. It would be very difficult to estimate the local fiscal impacts of taxation since the statewide measure has not been considered by voters and the siting of medical marijuana dispensaries is unlikely to be known until 2015.

Recommendation:

Staff respectfully requests City Council adoption of Ordinance 2014-019 establishing a tax on the sale of marijuana and marijuana-infused products.



ORDINANCE 2014-019

ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA INFUSED PRODUCTS IN THE CITY OF SHERWOOD AND ADDING A NEW CHAPTER 3.25 TO THE MUNICIPAL CODE

WHEREAS, the City of Sherwood is an Oregon home-rule municipal corporation with a City Charter that grants it all the powers and authority that the constitution, statutes and common law of the United States and this State expressly or impliedly grant or allow as though each such powers were specifically enumerated; and

WHEREAS, that authority and power includes the authority to impose a tax on the sale of marijuana and marijuana-infused products sold within the City; and

WHEREAS, the City desires to tax the sale or transfer of marijuana and marijuana-infused products within the City.

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

Section 1. The City establishes a new Municipal Code Title 3 Chapter 3.25 – Marijuana Tax – to read as follows:

SECTION 3.25.010 Purpose.

For the purposes of this chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Sherwood is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

SECTION 3.25.020 Definitions.

When not clearly otherwise indicated by the context, the following words and phrases as used in this chapter have the following meanings:

“Gross Taxable Sales” means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.

“Manager” means the City Manager of the City of Sherwood.

“Marijuana” means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber

produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

“Oregon Medical Marijuana Program” means the office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.

“Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

“Purchase or Sale” means the retail acquisition or furnishing for consideration by any person of marijuana within the City and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.

“Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

“Retail sale” means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.

“Seller” means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.

“Tax” means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.

“Taxpayer” means any person obligated to account to the City Manager for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

SECTION 3.25.030 Levy of Tax.

- A. Every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter is subject to and must pay a tax for exercising that privilege. This tax is in addition to any other taxes or fees required by the City.
- B. The amount of tax levied is as follows:
 - 1. Zero percent of the gross sale amount paid to the seller of marijuana and marijuana infused products by a person who is a registry identification cardholder.
 - 2. Ten percent of the gross sale amount paid to the seller of marijuana and marijuana infused products by persons who are purchasing marijuana and marijuana-infused products but are not doing so under the provisions of the Oregon Medical Marijuana Program.

SECTION 3.25.040 Deductions.

The following deductions are allowed against sales received by the seller providing marijuana:

- A. Refunds of sales actually returned to any purchaser;
- B. Any adjustments in sales that amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

SECTION 3.25.050 Seller Responsible For Payment of Tax.

- A. Every seller must, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Manager, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Manager may establish shorter reporting periods for any seller if the seller or Manager deems it necessary in order to ensure collection of the tax. The Manager may require further information in the return relevant to payment of the tax. A return is not considered filed until it is actually received by the Manager.
- B. At the time the return is filed, the seller must remit to the Manager the full amount of the tax collected. Payments received by the Manager for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.
- C. The City will apply non-designated payments in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax.
- D. If the Manager, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Manager may order such a change. The Manager may establish shorter reporting periods for any seller if the Manager deems it necessary in order to ensure collection of the tax. The Manager also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest will be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. Sellers must hold in trust all taxes collected pursuant to this chapter for the City's account until the seller makes payment to the Manager. A separate trust bank account is not required in order to comply with this provision.
- E. Every seller required to remit the tax imposed by this chapter is entitled to retain five percent of all taxes due to the City to defray the costs of bookkeeping and remittance.
- F. Every seller must keep and preserve in an accounting format established by the Manager records of all sales made by the seller and such other books or accounts as the Manager may require. Every seller must keep and preserve for a period of three years all such books, invoices and other records. The Manager has the right to inspect all such records at all reasonable times.

SECTION 3.25.060 Penalties and Interest.

- A. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required must pay a penalty of 10 percent of the amount of the tax, in addition to the amount of the tax.
- B. If any seller fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, the seller must pay a second delinquency penalty of 10 percent of the amount of the tax in addition to the amount of the tax and the penalty first imposed.

- C. If the Manager determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25 percent of the amount of the tax will be added thereto in addition to the penalties stated in subparagraphs A and B of this section.
- D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter must pay interest at the rate one percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed, and any interest as accrues under the provisions of this section, becomes a part of the tax required to be paid.
- F. All sums collected pursuant to the penalty provisions in paragraphs A through C of this section will be distributed to the City's General Fund.
- G. Waiver of Penalties. Penalties for late tax payments may be waived or reduced if approved by City Council pursuant to City Council policy. Nothing in this subsection requires the City to reduce or waive penalties.

SECTION 3.25.070 Failure To Report and Remit Tax – Determination of Tax by Manager.

- A. If any seller fails to make any report of the tax required by this chapter within the time provided in this chapter, the Manager will proceed to obtain facts and information on which to base the estimate of tax due. As soon as the Manager procures such facts and information upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Manager will determine and assess against such seller the tax, interest and penalties provided for by this chapter.
- B. If the Manager makes a determination as outlined in subsection A, the Manager must give notice to the seller of the amount assessed. The notice must be personally served on the seller or deposited in the United States mail, postage prepaid, addressed to the seller at the last known place of address.
- C. The seller may appeal the determination as provided in section 3.25.080. If no appeal is timely filed, the Manager's determination is final and the amount assessed is immediately due and payable.

SECTION 3.25.080 Appeal.

- A. Any seller aggrieved by any decision of the Manager with respect to the amount of the tax owed along with interest and penalties, if any, may appeal the decision to the City Council.
- B. The seller must file the written notice of appeal within 10 days of the City's serving or mailing of the determination of tax due.
- C. The Council's decision is final subject only to judicial review pursuant to ORS 34.010 et seq.
- D. The City will serve the findings upon the appellant in the same manner as that used to give notice for a tax determination in SMC 3.25.070. Any amount found to be due is immediately due and payable upon the service of notice.

SECTION 3.25.090. Refunds.

- A. The City may refund to the seller any tax, interest or penalty amount under any of the following circumstances:
 - 1. the seller has overpaid the correct amount of tax, interest or penalty; or
 - 2. the seller has paid more than once for the correct amount owed; or
 - 3. the City has erroneously collected or received any tax, interest or penalties.
- B. The City may not issue a refund under this subsection unless the seller provides to the Manager a written claim under penalty of perjury stating the specific grounds upon which the claim is founded and on forms furnished by the Manager. The seller must file the claim within one year from the date of the alleged incorrect payment to be eligible for a refund.
- C. The Manager has 20 calendar days from the date of the claim's receipt to review the claim and make a written determination as to its validity. After making the determination, the Manager will notify the

claimant in writing of the determination by mailing notice to the claimant at the address provided on the claim form.

- D. If the Manager determines the claim is valid, the claimant may either claim a refund or take as credit against taxes collected and remitted the amount that was overpaid, paid more than once, or erroneously received or collected by the City. The claimant must notify the Manager of the claimant's choice no later than 15 days following the date the Manager mailed the determination and the claimant must do so in a manner prescribed by the Manager.
- E. If the claimant does not notify the Manager of claimant's choice within the 15-day period and the claimant is still in business, the City will grant a credit against the tax liability for the next reporting period. If the claimant is no longer in business, the City will mail a refund check to claimant at the address provided in the claim form.
- F. The City will not pay a refund unless the claimant establishes by written records the right to a refund and the Manager acknowledges the claim's validity.

SECTION 3.25.100 Actions to Collect.

Any tax required to be paid by any seller under the provisions of this chapter is a debt owed by the seller to the City. Any tax collected by a seller that has not been paid to the City is a debt owed by the seller to the City. Any person owing money to the City under the provisions of this chapter is liable to an action brought in the name of the City of Sherwood for the recovery of the amount owing. In lieu of filing an action for the recovery, the City, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the City has complied with the provisions set forth in ORS 697.105, if the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of \$50.00 or 50 percent of the outstanding tax, penalties and interest owing.

SECTION 3.25.110 Confidentiality.

Except as otherwise required by law, it is unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section prohibits any of the following:

- A. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana is sold or provided; or
- B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- C. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Manager or an appeal from the Manager for amount due the City under this chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- E. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six months or when the tax exceeds \$5,000. The City Council expressly finds that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

SECTION 3.25.120 Audit of Books, Records or Persons.

The City may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due. All books,

invoices, accounts and other records must be made available within the City limits and be open at any time during regular business hours for examination by the Manager or an authorized agent of the Manager. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Manager may immediately seek a subpoena from the Sherwood Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.

SECTION 3.25.130 Forms and Regulations.

A. The Manager is authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of the marijuana tax and to provide for:

1. A form of report on sales and purchases to be supplied to all vendors;
2. The records that sellers providing marijuana and marijuana-infused products must keep concerning the tax imposed by this chapter.

Section 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause does not affect the validity of the remaining sections, subsections, paragraphs and clauses.

Section 3. Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, remain valid and in full force and effect for purposes of all cases filed or commenced during the times this ordinance or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

Section 4. This ordinance shall be effective from and after 30 days following its adoption by the Council.

Duly passed by the City Council this 7th day of October 2014.

Bill Middleton, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Clark	_____	_____
Langer	_____	_____
Butterfield	_____	_____
VACANT	_____	_____
Grant	_____	_____
Henderson	_____	_____
Middleton	_____	_____