



**NOTICE OF PUBLIC MEETING**  
**CITY OF ALBANY**  
**CITY COUNCIL WORK SESSION**  
Municipal Court Room  
333 Broadalbin Street SW  
Monday, February 12, 2018  
4:00 p.m.

**AGENDA**

**OUR MISSION IS**

*"Providing quality public services  
for a better Albany community."*

**OUR VISION IS**

*"A vital and diversified community  
that promotes a high quality of life,  
great neighborhoods, balanced  
economic growth, and quality public  
services."*

Rules of Conduct for Public Meetings

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the meeting.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the meeting.

- 4:00 p.m. CALL TO ORDER
- 4:00 p.m. ROLL CALL
- 4:05 p.m. BUSINESS FROM THE PUBLIC
- 4:10 p.m. LBCC WORKFORCE DEVELOPMENT FUND UPDATE – Jorge Salinas and David Becker, LBCC. [Verbal]  
*Action Requested: Information.*
- 4:20 p.m. HUMAN RELATIONS COMMISSION REQUEST – Jorge Salinas. [Verbal]  
*Action Requested: Information, discussion, and direction.*
- 4:25 p.m. CONCURRENT ZONE CHANGE AND DEVELOPMENT APPLICATIONS – Bob Richardson. [Pages 2-5]  
*Action Requested: Information and discussion.*
- 4:45 p.m. STORMWATER PERMIT UPDATE – Mark Yeager. [Pages 6-11]  
*Action Requested: Information and discussion.*
- 5:30 p.m. STORMWATER SERVICE CHARGES – Jeff Blaine and Chris Bailey. [Pages 12-14]  
*Action Requested: Information, discussion, and direction.*
- 6:00 p.m. BUSINESS FROM THE COUNCIL  
➤ Legislative Advocacy Policy Issue Areas – Mayor Konopa. [Pages 15-18]  
*Action Requested: Information and discussion.*
- 6:10 p.m. CITY MANAGER REPORT
- 6:15 p.m. ADJOURNMENT

*City Council agendas, minutes, and audio/video recordings available at [www.cityofalbany.net](http://www.cityofalbany.net).*

*The location of the meeting/hearing is accessible to the disabled. If you have a disability that requires accommodation, advanced notice is requested by notifying the City Manager's Office by email, [CMadmin@cityofalbany.net](mailto:CMadmin@cityofalbany.net); or by phone, 541-704-2307 or 541-917-7519.*



TO: Albany City Council

VIA: Peter Troedsson, City Manager *PT 2/7*  
Jeff Blaine, P.E., Public Works Engineering and Community Development Director *JB*

FROM: Bob Richardson, Planning Manager *JB for*

DATE: February 6, 2017, for the February 12, 2018, City Council Work Session

SUBJECT: Concurrent Zone Change and Development Applications

- RELATES TO STRATEGIC PLAN THEME:
- Great Neighborhoods
  - Healthy Economy

Action Requested:

None

Discussion:

Zoning Overview

During the December 6, 2017, City Council meeting, Council raised concerns regarding zone change applications that are submitted without a concurrent development proposal. Of primary concern is an inability to consider potential impacts on surrounding land uses that might result from the development of uses permitted under the proposed zone or impacts resulting from development to standards of the proposed zone that are different from standards of the current zone. This memo responds to those concerns but first provides an overview of the land use planning framework to provide an understanding of the role and purpose of zoning.

In 1973, Oregon established a statewide planning program that includes 19 statewide planning goals and requires local comprehensive plans to be consistent with those goals. The Albany Comprehensive Plan was adopted in 1980 and has been amended multiple times since then. The Comprehensive Plan is largely a policy document that, according to its purpose statement, “provides a framework for making better decisions about the uses of land and its resources. It is a guideline for both short- and long-term development”.

The Comprehensive Plan includes a map that designates all areas within the Albany urban growth boundary (UGB) with one of ten land use designations such as Heavy Industrial, Village Center, and Open Space. These broad land use designations are further defined by a zoning map which divides the City into multiple districts (zones). With the exception of the Open Space designation, all Albany Comprehensive Plan map designations can be implemented by more than one zone. For example, an area with the Heavy Industrial comprehensive plan designation could either be zoned Light Industrial or Heavy Industrial.

A zoning ordinance, such as the Albany Development Code (ADC), specifies which uses can occur in each zone and sets forth basic standards for site development. As such, zones and their permitted uses and corresponding development standards in the ADC are fundamental tools for implementing policies of the City’s comprehensive plan in a way that is consistent with statewide planning goals and related legislation.

Broadly speaking, there are two perspectives or approaches with respect to changing the zone on a property. One is that zones should be easily interchangeable if they are consistent with the

comprehensive plan map designation. For example, if the comprehensive plan map designation is Low Density Residential, one should easily be able to change the zone from Low Density RS-6.5 to Low Density RS-5 because both have previously been determined to be consistent with the Low Density Residential comprehensive plan designation. Generally, this approach is most appropriate if there are only a few zones that implement each comprehensive plan designation, or there are relatively few permitted uses in each zone and the potential compatibility impacts of those uses are well understood.

If there are a relatively large number of zones and corresponding uses that could implement a comprehensive plan map designation, a second approach is to provide a detailed analysis when each zone change is proposed. Under this approach, the whole range of uses of a proposed zone should be considered at the time of the zone change request with emphasis placed on the most intensive uses reasonably expected to occur. It is assumed that if the most intensive use is found to satisfy the zone change criteria, all less intensive uses would as well. This also assumes that all uses would be established in accordance with applicable development standards. In this approach, the zone change review criteria and development standards take on extra importance as analysis and decisions must be based only on these review criteria and an understanding of the basic parameters set by the development standards.

In Albany, the just described second approach has typically been taken. The review criteria used to evaluate zone changes are provided below.

**2.740 Review Criteria. Zoning Map amendments will be approved if the Council finds that the applicant has shown that all of the following criteria are met:**

- (1) The proposed base zone is consistent with the Comprehensive Plan map designation for the entire subject area unless a Plan map amendment has also been applied for.**
- (2) Existing or anticipated transportation facilities are adequate for uses permitted under the proposed zone designation.**
- (3) Existing or anticipated services (water, sanitary sewers, storm sewers, schools, police and fire protection) can accommodate potential development in the subject area without adverse impact on the affected service area.**
- (4) The intent and purpose of the proposed zoning district best satisfies the goals and policies of the Comprehensive Plan.**
- (5) The land use and transportation pattern recommended in any applicable City-contracted or funded land use or transportation plan or study has been followed, unless the applicant demonstrates good cause for the departure from the plan or study. [Ord. 5635, 1/11/06, Ord. 5764, 12/1/11]**

**Zone Change and Development Applications**

Sometimes zone change proposals are submitted with a development proposal, in which case both the zone change and development proposal would be considered by Council. In other instances, zone change applications are submitted independent of a development proposal. Council expressed a general preference for receiving zone change requests with development proposals and inquired about making that a required practice. As explained below, there are advantages and disadvantages to implementing such a requirement.

Advantages

One advantage of requiring a development proposal concurrent with a zone change application is decision makers and interested parties would potentially better understand impacts of the proposed development on surrounding uses. This could result in more meaningful public testimony and would result in a more specific analysis by staff and decision makers. A second advantage is that Council could apply conditions of approval to the development proposal (not the zone change application) if necessary to satisfy applicable standards or review criteria.

Disadvantages

Despite the potential benefits, there are a number of concerns that make it difficult to require a zone change to be accompanied by a development application. A practical concern for a developer is that it would increase costs and risks to them, as they would have to spend additional money on the development plans without knowing if the zone change application would be approved. A second concern is that if a development application is submitted with the zone change request and both are approved, there would be no guarantee that the proposed development would be built. Similarly, if the approved project were constructed, it could be removed or modified in the future.

The City could potentially require a deed restriction or some type of zoning overlay to the site, e.g. a Planned Development overlay, to set development related parameters. In both instances, the restrictions would run with the land and apply to future development proposals. However, these types of restrictions raise additional concerns. One is that depending on the restriction and the form it took, it could be considered as contract zoning, which may conflict with Oregon law and is generally considered bad practice. For example, applying a zone to a site and through conditions of approval, prohibiting certain uses on that site that would otherwise be permitted on other sites in the same zone may not be legally defensible. Requiring improvements to a site as a condition of approval on a zone change would also be legally dubious. Selectively permitting uses on a site-by-site basis indicates that the uses permitted in the zone may not be consistent with the Comprehensive Plan. Likewise, requiring site improvements as a condition of approval for a zone change application indicates that the development standards in the Code do not sufficiently achieve the purposes of the zone or result in development compatible with surrounding uses.

Practically speaking, applying such limitations could inhibit the site from evolving to meet changing demands or interests of future owners and would most likely require an additional layer of review. Such a review would almost certainly involve discretion on the part of the decision maker. For non-residential projects, this discretionary review process would, at minimum, increase uncertainty about the outcome of the decision and would likely be slower and costlier than the typical land use review process, which could discourage development. For residential projects, requiring discretionary review without the option for a clear and objective decision would be counter to State “needed housing” legislation.

Conclusion and Recommendation

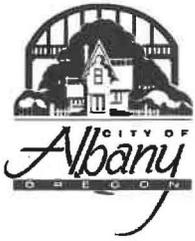
City staff has consulted with the City Attorney, who has in turn consulted with a staff attorney for the League of Oregon Cities. Based on these conversations and research, staff found nothing in State law that prohibits a city from requiring that zone changes be accompanied by a development application. Staff is also unaware of any city in the state that requires simultaneous submittal of the two application types, and the Albany Development Code (ADC) does not require this.

While there may be nothing in state law that would prohibit the City from requiring concurrent applications, as explained above, staff analysis finds that the disadvantages of requiring development applications to be submitted with zone change applications outweigh the advantages and add significant exposure and risk to the developer. Therefore, staff recommends that development applications not be required concurrent with zone change applications.

Budget Impact:

None

RAR:eo



TO: Albany City Council

VIA: Peter Troedsson, City Manager *PT 2/7*  
Jeff Blaine, P.E., Public Works Engineering and Community Development Director *JB*  
Chris Bailey, Public Works Operations Director *CB*

FROM: Mark A. Yeager, P.E., CWRE, Utility Services Manager *MY*

DATE: February 6, 2018, for the February 12, 2018, City Council Work Session

SUBJECT: Phase II MS4 Stormwater Permit

RELATES TO STRATEGIC PLAN THEME: ● A Safe City  
● An Effective Government

Action Requested:

No Council action required. Staff will provide background information and a status report on the recently issued Oregon Department of Environmental Quality (DEQ) draft Phase II Municipal Separate Storm Sewer Systems (MS4) Stormwater General Permit.

Discussion:

Council previously received information about the pending stormwater discharge permit requirements during discussions for initiation and implementation of the citywide stormwater service charge. As part of those discussions, information about stormwater regulatory requirements were presented to Council in June 2015. Since that time, the DEQ issued a draft permit in July 2016, which was subsequently withdrawn following receipt of a significant volume of public comments. Most recently, the DEQ issued another draft Phase II permit on November 27, 2017. Staff has been reviewing the most recent draft documents since issuance and is prepared to provide an update to Council. To provide permit context and background to Council, as well as a status report, this memorandum is structured as a series of questions and answers.

**Why is Albany required to get a stormwater discharge permit?** When the Federal Clean Water Act was adopted in 1972, the primary focus of the law was the cleanup of point source pollution from industrial wastewater and municipal sewage discharges. At that time, discharges of stormwater were exempted from regulation. In 1987, the Federal Water Quality Act was adopted updating the Clean Water Act and requiring regulation of discharges from MS4s. The 1987 law required the Environmental Protection Agency (EPA) to adopt rules governing the permitting of stormwater discharges from MS4s.

In 1990, the EPA issued the Phase I rule regulating stormwater discharges for municipalities with populations greater than 100,000 and for industrial stormwater discharges. The Phase II Stormwater Rule was issued in December 1999 requiring permitting for MS4s serving Census-defined urbanized areas with populations greater than 50,000. The Phase II rule also granted authority to permitting agencies, in this case Oregon DEQ, to designate and include other communities with populations less than 50,000 in the permitting program after a determination that their stormwater discharges cause, or have the potential to cause, an adverse impact on water quality.

Following completion of the 2000 Census, Albany's urbanized area population was barely under 50,000; therefore, Albany was not automatically designated for inclusion in the stormwater permitting program. DEQ did not go through the process at that time to evaluate Albany's

stormwater discharges and did not make the required determination for inclusion in the program. However, upon conclusion of the 2010 Census, Albany's urbanized area population exceeded the 50,000-person threshold. Albany is now automatically included in the required permitting program.

In addition to Albany, communities in the Albany urbanized area initially proposed for inclusion in the stormwater permitting program were the cities of Jefferson, Tangent, and Millersburg, as well as areas in Linn County within Albany's urbanized area. Jefferson and Tangent successfully pursued an exemption from stormwater permitting requirements, while Millersburg and Linn County remain in the program and will be required to apply for a stormwater discharge permit.

**What is the history of the Phase II MS4 stormwater permit development in Oregon?**

Following adoption of the Phase II rules by EPA in 1999, Oregon DEQ developed and issued, mostly in 2007, individual Phase II stormwater permits to 10 cities, 4 counties, and 1 special service district. By statute, these permits have a five-year duration, and provided that the permit holder makes renewal application to DEQ within 180 days prior to the expiration date of the permit, the permits are administratively extended until a new permit is issued. All the existing permits in Oregon for the Phase II communities are currently expired and have been administratively extended.

Approximately six years ago, the DEQ began the process to develop a revised Phase II stormwater permit to be issued to the existing Phase II communities and to newly designated Phase II communities (five cities, including Albany, and two counties) following the completion of the 2010 Census. The DEQ made the decision that it was no longer going to issue individual permits to these communities because of their concern about the administrative burden to the DEQ associated with issuance and management of individual permits. The DEQ is planning to issue one general permit that is applicable to all Phase II communities regardless of the size of the community and without consideration of whether the community is new to the stormwater permitting program or is a renewing Phase II stormwater community. The difference between a general permit and an individual permit is the DEQ general permit has specific compliance requirements that every permitted community will be required to meet regardless of size, capability, or any other factor. Previously, the individual permits had a limited number of common requirements for all communities and allowed the permitted community to tailor its stormwater program through the development and adoption of their Stormwater Management Plan (SWMP).

The DEQ began this permit development process by creating a stakeholder advisory committee, holding numerous meetings and listening sessions, and issuing multiple informal and formal drafts of a proposed general permit. Throughout this process, the DEQ and stakeholders have been unable to reach a consensus regarding the proper permit format (individual or general permit), or the extensive permit requirements. The DEQ is determined to issue a single general permit to all Phase II communities and is now seeking public comment on its latest formal draft general permit issued November 27, 2017.

Throughout this process, City of Albany staff has actively participated in the stakeholder advisory committee process along with other interested parties including the League of Oregon Cities (LOC), Oregon Special Districts Association (SDAO), and the Oregon Association of Clean Water Agencies (ACWA). Several members of Albany Public Works staff have spent hundreds of hours participating in the stakeholder advisory committee, reviewing language from the previous and current draft permits, and developing formal comments for submittal to the DEQ through the public

comment processes. Some of this input resulted in modifications to the draft permit, but much of our input did not create any change.

**How many communities in Oregon already have stormwater discharge permits?**

Approximately 20 communities are currently covered by Phase I stormwater permits. Some communities are covered under the umbrella of a single entity such as Clean Water Services in Hillsboro; others, like Eugene and Salem, have their own individual Phase I permits. As noted previously, there are 15 entities in Oregon currently covered by individual Phase II Stormwater permits, and 7 more will be required to apply for coverage under the revised Phase II permit.

**What do the Phase II MS4 regulations require?** When the Clean Water Act was amended in 1987 to include controls and requirements for stormwater, Congress recognized that managing stormwater presents very specific and different challenges than managing wastewater. Because the occurrence of stormwater is seasonal and intermittent, and because the frequency and intensity of rainfall events vary widely throughout the nation, Congress established a different standard for managing stormwater discharges than that required for wastewater discharges.

Wastewater discharge permits are based on requirements to meet specific effluent limits at the end of the pipe. These types of requirements typically include numeric limits and compliance is based on laboratory sampling. Stormwater discharges are not regulated based on these numeric limits. Instead, the federal stormwater regulations envision that communities will tailor their stormwater programs to reduce the discharge of pollutants to the “maximum extent practicable” (MEP). The preamble to the 1999 rule issued by EPA stated, “MS4s need the flexibility to optimize reductions in stormwater pollution on a location-by-location basis.” Factors such as, “MS4 size, climate, implementation schedules, current ability to finance the program, beneficial uses of receiving water, hydrology, geology, and capacity to perform operation and maintenance,” are to be considered in determining MEP for each community. To reach MEP, permitted MS4s must develop and implement a series of best management practices (BMPs) in six minimum control measure areas:

- Public Education and Outreach on Storm Water Impacts
- Public Participation/Involvement
- Illicit Discharge Detection and Elimination
- Construction Site Storm Water Runoff Control
- Post-construction Storm Water Management in New Development and Redevelopment
- Pollution Prevention/Good Housekeeping for Municipal Operations

**Do the existing Phase I and Phase II permits in Oregon all have the same requirements?** All existing municipal stormwater permits in Oregon, both Phase I and Phase II, are individual permits that have the uniform basic requirements for a limited number of things like reporting and record keeping. All permits also require each individual community to develop and submit to the DEQ a Stormwater Management Plan (SWMP), which details what actions that community is going to take to reduce stormwater pollution to the MEP within their community. Through the SWMP, each community can design a stormwater program that recognizes the community’s water quality priorities and respects the community’s financial and administrative capabilities. That SWMP is publicly reviewed and approved by the DEQ and becomes an enforceable portion of the permit. The DEQ has stated that this method of issuing individual permits is too time intensive for the DEQ staff. In the recently issued draft Phase II MS4 General Permit, the DEQ is asserting that it has the authority to determine MEP for all Phase II programs and has issued a one-size-fits-all general

permit, that is very prescriptive. This approach essentially ignores the basic premises of MEP in the 1999 EPA Stormwater Rule.

**What is the status of the most recent draft of Phase II MS4 General Permit?** The DEQ issued its latest draft of the Phase II MS4 General Permit on November 27, 2017. The public comment period began upon issuance of the permit. A public hearing was held in Eugene on Monday, January 29, 2018, with final comments due by 5:00 p.m., February 20, 2018.

**What are the summary requirements in the draft Phase II MS4 General Permit?** As mentioned previously, the draft Permit is based on DEQ's determination of MEP for all Phase II communities. It is a one-size-fits-all permit regardless of whether the community has an existing stormwater program and permit. New communities required to get a permit must meet the same requirements in the five-year permit term as communities with fully developed programs. For the most part, small communities (less than 10,000 population) must also meet the same requirements. There are major elements of the draft permit that are technically infeasible, many requirements are financially burdensome with no water quality benefit, and the basic premises of the permit may be subject to legal challenge including the MEP standard, unfunded mandates under the Oregon Constitution, home-rule charter principles, and proportionality of development requirements.

**What is happening now to review and develop comments on the draft permit?** Albany is participating in collaborative efforts currently underway to comment and provide feedback to DEQ on the draft permit. Partners in this effort include the League of Oregon Cities (LOC), Oregon Special Districts Association (SDAO), and the Oregon Association of Clean Water Agencies (ACWA), Association of Oregon Counties (AOC), National Association of Clean Water Agencies (NACWA) and the Oregon Homebuilders Association (OHBA).

There are three broad categories of analysis – legal review, technical feasibility, and requirements that exceed program development capacity within the five-year permit term. The legal concerns include:

- By proposing to issue one general permit for all Phase II permittees, the DEQ is violating the principles of MEP as articulated in the EPA stormwater rule.
- The DEQ is requiring permittees to meet permit conditions that exceed our jurisdictional authority (e.g., on-site septic system investigations).
- By including permit conditions that exceed the federal minimum requirements without providing state funding, the DEQ may have created an unfunded mandate as defined in the Article XI, section 15 of the Oregon Constitution statute.
- The DEQ is requiring communities to provide “adequate finances, staff, equipment, and other support capabilities” to implement the permit as stipulated by the DEQ.
- The draft permit also contains language that prohibits the discharge of stormwater that could “cause or contribute to a violation of a water quality standard as established in OAR 340-041.” Inclusion of this language in the permit effectively prohibits the discharge of any stormwater without being in violation of the permit.

Albany has partnered with ACWA and other communities to hire legal counsel to conduct a review of the draft permit. Through this review, those portions of the permit that may conflict with state and federal law will be identified, and legal arguments against the structure and requirements of the draft permit will be developed.

A few of the many examples of the technical infeasibility of the draft permit include:

- The post-construction stormwater program requirements are unclear but seem to include a stormwater retention requirement for all new development or redevelopment activity creating 5,000 square feet or more of new impervious area. For many reasons, the implementation of the proposed post-construction stormwater program is not feasible. Staff has concerns about overall development costs and program complexities that may result in some currently developable properties being unable to develop if the permit requirements remain as written.
- The on-site septic system investigation requirements of the draft permit require Albany employees to gain access to private property to determine whether private septic systems are in good working order.
- For construction site runoff control, a requirement to “provide an opportunity for the public to submit information about whether the site plan under construction demonstrates compliance with the ordinance or other regulatory mechanism required.” This will create a direct conflict with timelines for building permit issuance stipulated in ORS 455.467.

Some examples of permit requirements that exceed Albany’s program development capability within the five-year permit term include:

- inspection of 20 percent of the stormwater system for illicit connections by the fourth year of the permit and 10 percent of the stormwater system each year thereafter;
- mapping requirements to track the catchment area for every structural stormwater control facility, and mapping of illicit connections and illicit discharge investigations; and
- the establishment of a city-wide litter control program particularly targeting “major public events.”

**What is the estimated cost for Albany to comply with the draft stormwater permit?** Albany is currently implementing each of the six stormwater control measures to a limited extent as a result of requirements issued by DEQ in the Willamette Basin TMDL. For instance, Albany has a limited construction site runoff control program in place, as well as some limited stormwater education and outreach efforts, and has developed post-construction stormwater quality facility requirements for new development. Expansion of existing programs and implementation of the newly required stormwater permit programs described in the current draft Phase II permit within the five-year permit term will place an undue financial burden on the residents of Albany.

If efforts to move towards more reasonable permit requirements are unsuccessful, the estimated cost for full implementation of the draft Phase II permit in Albany is nearly \$8 million over the five-year permit term with an estimated average annual cost of \$1.6 million. First-year costs will be greater due to startup of the permit program. Included in that amount is an estimated six full-time equivalent (FTE) positions that would need to be added over the first, five-year permit term simply to implement the permit. This represents an increase of approximately \$1,000,000 over current funding levels in these areas.

If efforts to move towards more reasonable permit requirements are successful, it is estimated that the annual cost to comply with the permit for Albany will be reduced to approximately \$900,000 per year but is still estimated to require additional annual revenues of around \$300,000 per year for permit compliance.

**What is the bottom line?** The draft Phase II MS4 Stormwater Permit represents a significant departure from previously issued stormwater permits in Oregon. As mentioned above, there are many concerns about the draft permit and the DEQ's approach. If Albany were to apply for and accept the draft permit as proposed, the City would be immediately at risk for permit violations and could be subject to enforcement by DEQ or by third-party litigants. The Clean Water Act allows third parties to sue to ensure enforcement of permit requirements.

As mentioned previously, Albany is working with other communities, Oregon ACWA, and other organizations such as the League of Oregon Cities to develop comments on the draft permit. These comments include suggestions for an alternative permitting approach involving three general permits to cover small communities, new communities, and renewing Phase II permit holders.

Once public comments have been submitted (due February 20), the DEQ plans to review comments, respond to comments as they deem appropriate, and issue a revised draft permit. It is not clear whether the DEQ will allow another formal public comment period on the next version of the permit. Staff will return to Council as the process develops to provide updates on the permit development process.

Budget Impact:

None.

MY:kc

Attachment



TO: Albany City Council  
VIA: Peter Troedsson, City Manager *8/2/7*  
FROM: Jeff Blaine, P.E., Public Works Engineering & Community Development Director *JB*  
Chris Bailey, Public Works Operations Director *CB*

DATE: February 6, 2018, for the February 12, 2018, City Council Work Session

SUBJECT: Stormwater Service Charges

RELATES TO STRATEGIC PLAN THEME:

- A Safe City
- An Effective Government

Action Requested:

Staff recommends Council receive this staff report and provide direction on stormwater service charges to be effective March 1, 2018.

Discussion:

*Background*

In January 2015, the Albany City Council began a multi-year discussion on operations, maintenance, and regulatory requirements for stormwater services and related costs. These discussions were initiated in response to the City's Strategic Plan objectives to:

- develop a full storm drain system program, and
- identify a stable funding strategy for stormwater utility functions.

After nearly two years of deliberation and public outreach, Council adopted stormwater service charges on November 9, 2016, to be effective March 1, 2017. Future rate adjustments were to be considered annually based on revenue and expenditure history and projections. This memorandum represents the first of such reports.

Initial stormwater rates were set with the objective of collecting \$1.75 million in revenue the first year. Current revenue estimates show we are on target to collect the intended amount from our approximately 18,000 new stormwater accounts.

Council's direction was to start the new stormwater program small and grow the program over time as required to respond to various program drivers. The \$1.75 million first-year revenue target was set based on funding existing activities (previously funded through sewer and street programs) and utility billing activities necessary to support ongoing billing and account maintenance. Although much discussion was given to the cost of complying with anticipated stormwater regulations, the initial rates were not set at a level that would fund permit compliance. Stormwater permit requirements from the Department of Environmental Quality (DEQ) were not fully defined at that point and there was concern about raising rates prematurely.

*Required Revenues*

As with the water and sanitary sewer funds, revenue requirements are established to pay for three general categories of expenses: debt service, operations and maintenance (O&M), and capital projects. The City does not have stormwater related debts so annual revenue requirements in the stormwater fund are limited to those necessary to pay for O&M and capital projects. Anticipated costs for each of these categories are discussed separately below. For purpose of discussion, regulatory compliance is considered a function of O&M.

### *Operations and Maintenance*

Historically, Albany has done very little to maintain its stormwater system. Overall, our activities could best be described as reactive rather than proactive. Regular street sweeping and inlet cleaning has been completed to manage the volume of debris entering the piped system; however, the 135 miles of pipe have not been routinely inspected or maintained to prevent sink holes, flooding, or property damage. With a dedicated funding source and more focused attention to stormwater staff anticipates Fiscal Year 17-18 being a turning point towards more sustainable practices. The following list of maintenance activities summarizes staff's achievements for the year:

- Clean, inspect, and assign a condition rating on 15 percent of the piped system (system total – 135 miles)
- Repair 13 catch basins, replace 3 culverts, dredge 600 feet of stormwater ditches
- Inspect/clean 28 percent of stormwater inlets (system total – 4,307)
- Maintain current stormwater quality facilities (system total – 116)
- Regulatory compliance
- Regular street sweeping services totaling 4,840 miles (stormwater funds 50%)

Staff is working toward an asset management approach for the stormwater system that identifies potential problems and addresses them before they become emergencies. Such a program would closely resemble the current asset management strategy used in the wastewater collection system and would include televised inspection and cleaning of each stormwater pipe; inspection of storm ditches, channels, and outfalls; prioritization of defects and failures within the system; and annual programming of funds (as discussed in the capital projects section of this memo) to address these issues in a systematic and efficient manner. This type of program will help the City maintain existing infrastructure for as long as possible and will lead to more efficient use of available funding.

As the stormwater system grows over time, so will the costs to maintain the system, although major near term increases for basic maintenance services are not anticipated. On the other hand, costs for regulatory compliance are anticipated to increase significantly in the coming years. Council will hear more about the DEQ's stormwater permit through separate memorandum and presentation at the February 12, 2018, Council Work Session. If Albany is required to comply with permit conditions as proposed in DEQ's draft permit, staff estimates it could require an additional annual investment of up to \$1 million. Staff does not believe the proposed permit conditions are reasonable and is actively working with partners around the state to provide public comment to DEQ. If a reasonable permit were ultimately implemented, staff estimates the additional annual cost for compliance would be closer to \$300,000.

### *Capital Projects*

Defining the level of annual capital investment required in the stormwater system is difficult, primarily because we lack the data necessary to make a recommendation. There are two categories of capital projects: capacity increasing projects and perpetual life replacement projects (replacing failed lines or those that have exceeded their service life and are anticipated to fail.).

Capacity increasing projects are typically identified through a master planning process. The City's last stormwater master plan was completed in 1988 and is only marginally valid. North Albany has not been studied since the County last studied it in the mid to late 1970's. A stormwater master plan update is underway; however, until it is complete, priority capacity increasing projects cannot be identified.

Stormwater perpetual life replacement projects are best identified through system wide condition assessments as described in the O&M discussion above. Over the last few years, staff have managed to clean, inspect, and rate nearly 50 percent of the stormwater system. The results show that eight miles of pipe are in a failed condition or are anticipated to fail in the next 10 years. Another nearly one mile of pipe needs significant maintenance and repair to address root intrusions. To address all these issues would cost an estimated \$20 million. If the remaining portion of the system to be inspected is in similar condition, that number increases to \$40 million.

Another factor complicating decisions about appropriate funding levels for stormwater capital projects is that staff estimates, on average, \$400,000 is required annually to fund stormwater improvements associated with planned street projects. Street funds are currently used to cover these costs. This practice impacts the amount of street improvements that can be pursued. If additional street funding is secured and the number of street projects increases, there will be a corresponding increase in the amount of stormwater funds required to build related stormwater facilities. Consequently, there would be a corresponding increase in the funding gap.

*Requested Direction – Rate Adjustment*

Based on the information provided in this memorandum, at the February 12 Work Session staff will present several levels of service alternatives, corresponding revenue requirements, and resulting rate adjustments. Staff is requesting Council receive the information and provide direction regarding any stormwater rate adjustments for March 1, 2018. Based on the direction received, staff will prepare a rate resolution for a public hearing to be held at the February 28, 2018, City Council Meeting.

Budget Impact

The budget impact will depend on the direction provided by Council.

JB:kc

Attachment

- c: Kristin Preston, P.E., Wastewater Superintendent (via email)
- Rob Emmons, P.E., Assistant City Engineer (via email)
- Jeni Richardson, P.E., Civil Engineer III (via email)
- Jeff Babbitt, Senior Accountant (via email)
- Patty McInnes, Utility Billing Customer Service Supervisor (via email)



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## MEMORANDUM

**DATE:** January 24, 2018  
**TO:** OCWCOG Board of Directors  
**FROM:** Fred Abousleman, Executive Director  
**RE:** **Legislative Policy Education - Broad Issue Areas**

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### Background

The Board of Directors (Board) for the Oregon Cascades West Council of Governments (OCWCOG), representing 25 local, tribal and port districts in Linn, Benton, and Lincoln Counties has developed the following policy education issue areas for consideration for legislative and administrative action. These areas represent the coordinated efforts of local elected leaders and staff in developing solutions to problems facing our residents, businesses, and governments in our tri-counties Region. These areas are inclusive and supportive of the League of Oregon Cities (LOC), the Association of Oregon Counties (AOC), our industry, and national associations, but may, in some cases, reflect priorities most relevant to our localities or affecting specific geographic or policy areas in detail.

The OCWCOG service area, spanning the three Counties, serves five Senate, seven House districts, and two Congressional districts. Linn, Benton, and Lincoln Counties are home to a population of over 270,000 residents, Oregon State University, Linn-Benton Community College, Oregon Coast Community College, Hatfield Marine Science Center, the Environmental Protection Agency's Western Ecology Division Laboratory, the U.S. Department of Energy's Albany Research Center, two major fishing and fleet repair ports, numerous docking ports, the National Oceanic and Atmospheric Administration Marine Operations Center - Pacific Research Fleet, and numerous international and national high tech, marine, science, and manufacturing and distribution businesses. Our Region has an expanding international aquaculture and agriculture presence worth hundreds of millions of dollars. The three Counties are also intersected by Interstate 5 and 101, and State routes 34 and 20, all with increasing commuter and truck traffic, four commuter airports, and numerous rail lines.

## **Local Control**

The core tenant of OCWCOG programs is to support local control over State and Federal funding to the greatest extent possible. As such, OCWCOG supports increased local control, autonomy, and funding for local jurisdictions, tribes, and special districts in statutory and legislative decision making. Local governments have diverse and varied needs, and need the ability to respond effectively with “home-grown” solutions to complex situations, as appropriate.

Issues to address:

- *Impacts of Legislation and State agency actions on small cities and rural counties*  
Policy, and the costs associated with implementation, may not be effective for small cities and rural counties. OCWCOG supports procedural changes pertaining to Legislation and State agency actions, to improve research and information gathering practices regarding policy cost implications on small and/or rural communities.

## **Transportation – Equity, Mobility, Access, and Safety**

OCWCOG supports comprehensive and robust State and Federal funding to maintain, build, and support a safe, balanced, multimodal, and intermodal transportation system in our tri-County Region. OCWCOG supports a fair, transparent, and equitable allocation of resources to local and tribal governments. Linn, Benton and Lincoln Counties are unique in their needs, including urban and rural connectivity, supporting Valley growth in population, the distribution of goods and services, the support of our maritime facilities, and the individuality of valley and coastal connectivity.

Issues to address:

- *Improving working relationships with the Oregon Department of Transportation (ODOT)*  
Local jurisdictions attempting to work with ODOT for capital improvements can face inefficiencies, creating additional costs, delays, and confusion around policy. OCWCOG supports improvements in procedures relating to ODOT, specifically regarding transparency, data sharing and accuracy, timeliness of processes, cost-effectiveness, and overall efficiencies.

## Economics, Development, and Environment

OCWCOG supports a comprehensive, but balanced approach to the economic future of our tri-County Region, and to ensuring its continued environmental qualities in water, land, and air. OCWCOG recognizes the unique nature of our three Counties, their role in innovation, education, manufacturing, maritime, and scientific industries, as well as the need to identify and support local businesses and growth opportunities.

OCWCOG supports creating access to opportunities in housing, job training and support, and other essential areas that allow the building and support of a well-trained and flexible workforce; access to capital to build business; and environmental policy that protects our natural resources, ensures our quality of life, and integrates with housing, transportation, and business needs.

Issues to address:

- *Housing affordability and availability*  
Access to affordable, quality housing is a regional problem with broad impacts, including health and economic stability. OCWCOG supports increased State and Legislative focus in implementing and funding localized policies, to promote increases in affordable, quality housing, with emphasis on low-income and workforce populations.
- *Wetlands*  
Wetlands permeate the OCWCOG Region, creating confusion and challenges regarding land development. OCWCOG supports increased clarity, transparency, timeliness, and consistency regarding working with the US Army Corps of Engineers, and the Department of State Lands. OCWCOG supports improvements regarding analysis of wetlands locations, and policies and procedures for mitigation, while supporting our water, land, and environmental quality. This issue may be more administrative in nature.
- *Disaster resiliency and planning*  
OCWCOG's Region is an economic hub with diverse industries and access needs. Planning for disaster recovery and resiliency is essential to ensuring the wellbeing of residents, and the ability of our Region to recover quickly in a post-disaster environment. OCWCOG supports increased initiatives regarding disaster resiliency and planning, including localized disbursements of funding for improved effectiveness.
- *Land use planning*  
In our geographically diverse State, land use issues vary greatly, as do urban growth needs and annexation issues. OCWCOG supports greater local control pertaining to land use issues, including annexation processes, and development of urban growth boundaries.

## Health, Community and Social Services

As a lead agency in Medicaid delivery, transportation options, services for seniors and people with disabilities, *Meals on Wheels*, and a myriad of other programs for our aging and susceptible populations, OCWCOG supports a State and Federal commitment to protecting our most vulnerable populations.

Issues to address:

- *Continued and sustainable funding for programs serving seniors and people with disabilities*  
OCWCOG supports efficient and effective care for senior and disabled populations as a vital part of community health. Thus, OCWCOG supports continued and consistent funding for Medicaid programs, as well as other cost-saving programs such as *Oregon Project Independence (OPI)* and the *OPI Pilot*.
- *Improvements in Home Care Worker (HCW) programs*  
HCWs continue to be in high-demand. OCWCOG supports investments in systems and supports to improve the quality, safety, and satisfaction of HCWs, by providing improved administrative support, trainings, and timely background checks. This issue may be more administrative in nature.
- *Improving working relationships with the State's Aging and People with Disabilities (APD) program*  
Oftentimes agencies working with APD can experience confusion regarding budgetary allocations, creating problems as individual Area Agencies on Aging attempt to anticipate impacts on their programs. OCWCOG supports improved transparency and better quality of data regarding funding allocations. This issue may be more administrative in nature.