

Workshop Meeting Agenda

Monday, October 3, 2016, 4:00 PM

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

1. Call To Order
2. Roll Call
3. Topics
 - a. Rowe/ACLU Concerns RE: Ordinance 16-O-754

Documents:

[ROWE ACLU CONCERNS. CWR.PDF](#)
[ROWE ACLU CONCERNS.ATT.A.ROWE LETTER.PDF](#)
[ROWE ACLU CONCERNS.ATT.B.ACLU LETTER.PDF](#)
[ROWE ACLU CONCERNS.ATT.C.RICE MEMO.PDF](#)

- b. Friends Of Music Request

Documents:

[FOM REQUEST. CWR.PDF](#)
[FOM REQUEST.ATT.A.LETTER.PDF](#)

- c. Electronic Document Management & Migration

Documents:

[DOC SCAN-MGT. CWR.PDF](#)
[DOC SCAN-MGT.ATT.A.PRESENTATION EXCERPTS.PDF](#)
[DOC SCAN-MGT.ATT.B.OAR 166 DIV 17.PDF](#)
[DOC SCAN-MGT.ATT.C.ORMS PARTNERSHIP.PDF](#)
[DOC SCAN-MGT.ATT.D.ORMS PRICING.PDF](#)
[DOC SCAN-MGT.ATT.E.NEWS ARTICLES.PDF](#)

- d. Elks Lodge RV Regulations

Documents:

[ELKS RV PARK. CWR.PDF](#)

- e. Pacific Avenue Signage

Documents:

[PACIFIC AVE SIGNAGE. CWR.PDF](#)

- f. Long-Term Strategic Plan

Documents:

[LONG-TERM STRAT PLAN. CWR.PDF](#)
[LT STRAT PLAN.ATT.A.PLAN.PDF](#)

4. Council Member Request For Workshop Items
5. Adjournment

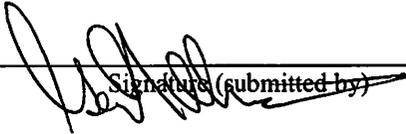
All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 72 hours advance notification. Please contact 469-1102 if you have any questions regarding this notice.

CITY OF BROOKINGS

COUNCIL WORKSHOP REPORT

Meeting Date: October 3, 2016

Originating Dept: City Attorney



Signature (submitted by)

City Manager Approval

Subject: Rowe/ACLU Concerns RE: Ordinance 16-O-754

Background/Discussion:

The City received letters from Curry County resident Mary Rowe and the American Civil Liberties Union of Oregon expressing concern regarding certain provisions of Ordinance 16-O-754 concerning Abusive Solicitation and Unlawful Transfer.

The letters are attached.

Upon receiving the letter from ACLU, the City Manager referred this matter to the City Attorney for analysis and follow-up. The City Attorney reports that she has attempted to interact with ACLU representatives concerning this matter without success. The City Attorney has provided a memorandum addressing the issues raised in the letters.

The City Manager wishes to discuss this matter with the City Council prior to placing the matter on a City Council agenda for possible modification of the Ordinance.

Rowe, who resides in Gold Beach, has requested that she be allowed to participate in the workshop by telephone.

Attachment(s):

- a. Letter dated June 19, 2016, from Mary Rowe
- b. Letter dated July 19, 2016, from ACLU of Oregon
- c. Memorandum from City Attorney Martha Rice

Ms. Mary Rowe
94111 5th Place #1
P.O. Box 1302
Gold Beach, OR 97444
(541) 661-2170

June 19, 2016

Mr. Gary Milliman
Brookings City Manager
898 Elk Dr.
Brookings, OR 97415

Dear Mr. Milliman:

I am writing this letter in order to request that the City of Brookings amend Ordinance 16-0-754, which added sections 9.10.345, Abusive Solicitation and 10.20.145, Unlawful Transfer, to the Brookings Municipal Code. Specifically I am requesting that "Abusive Solicitation", Section 9.10.345, be amended.

I believe that this ordinance went into effect on April 27, 2016.

As I am not an attorney, please forgive the composition of this letter.

I believe that the Abusive Solicitation section 9.10.345, is a clear violation of the freedom of speech guaranteed under Article 1, Section 8 of the Oregon Constitution. Accordingly, I am asking that it be changed as follows: The definition of "Abusive Solicitation" should not include: "continuing to solicit once the person being solicited has declined the request" (C) (4) (a); "following the person being solicited by proceeding behind, ahead or alongside of him or her after the person being solicited has declined the request" (C) (4) (c); "using words, signage, gestures and/or actions directed at the person being solicited, which are offensive" (C) (4) (e).

I believe that three recent decisions by higher courts clearly illustrate that one's freedom of expression cannot be limited to the extent that this ordinance limits it.

In *State v. Richardson*, 277 Or App 112 (Or. App., 2016), the Court of Appeals of the State of Oregon found that a man who attempted to help a woman who could not get into her apartment because her boyfriend had barricaded himself in the apartment, was exercising his right to freedom of expression when he banged on the door, and then said in a loud, deep voice, "Police. Open up or we'll break the door down. We have guns." This was followed by his continuing to pound on the door for several more minutes. The Court stated that his conduct was "primarily speech and not proscribed by ORS 166.025(1)(a)". This decision by the Court of Appeals of the State of Oregon upheld a decision made in State Circuit Court by one of our two judges in Curry County.

A decision that is even more relevant to the Brookings "Abusive Solicitation" Ordinance is: *City of Eugene v. Lee*, 177 Or App 492, 494-95, 499-500, 34 P3d 690 (2001), which concluded that the defendant, a street preacher, did not violate a city ordinance identical to ORS 166.025(1)(a), by pounding on his bible and shouting insults at passersby--calling them "whores," "whoremongers," and "drunkard(s)"--because there was "no evidence that (the) defendant engaged in physical acts of aggression."

In *State v. Johnson*, 191 P3d 665-Or: the Supreme Court of Oregon made a decision about a criminal case that presented a question about Oregon's constitutional protection of free expression being in conflict with an Oregon statute, which was designed to punish abusive or insulting speech calculated to produce a violent response.

The Supreme Court of Oregon found that "The Defendant's expression may have been offensive, but the state may not suppress all speech that offends. ORS 166.065 (1)(a)(B) criminalizes a harm that results only from a specific kind of expression--public insults through words or gestures. The harm that the statute seeks to prevent--harassment or annoyance--generally is one against which the Oregon Constitution does not permit the criminal law to shield individuals when that harm is caused by another's speech. For that reason, we conclude that the prohibition contained in ORS 166.065 (1)(a)(B) is overbroad on its face and violates Article 1, Section 8 of the Oregon Constitution."

The Supreme Court of Oregon further stated, "We recognize that our decision today prevents using the criminal law to alleviate some kinds of

distressing circumstances, but that is the consequence of Oregon's explicit protection of freedom of expression in Article 1, Section 8."

Another concern that I have with the "Abusive Solicitation" Ordinance is that the City of Brookings is a tiny city that does not have a full-time attorney as an employee, nor a prosecutor and the utilization of a defense attorney for those accused as Brookings Municipal Court deals with violations. Accordingly, a police officer who cites someone for "Abusive Solicitation" will, in effect, act as the prosecutor in the Brookings Municipal Court on an ordinance that requires considering the state of mind of the person cited (as "intentional, reckless or knowing"). Because determining "state of mind" is better left to those with greater expertise: prosecuting and defense attorneys, that creates a problem with the utilization of the "Abusive Solicitation" ordinance.

It also seems unusual for someone accused of "Abusive Solicitation" to be tried in Brookings Municipal Court, while a person who may have, for instance, assaulted him or her, is being tried in Curry County Circuit Court, which may require the two courts to coordinate.

Please consider my objections to the "Abusive Solicitation" Ordinance, 9.10.345, and consider removing the portions of it that are based on "offensive conduct" while keeping the portions that refer to "threatening conduct." The three court cases I cited should be sufficient to justify such a change. Please also consider the problems with determining an accused persons "state of mind" at the level of a tiny city's municipal court.

I would appreciate being contacted at my post office box.

Sincerely,

Mary Rowe



cc: American Civil Liberties Union, Portland, Oregon



July 19, 2016

SENT VIA E-MAIL AND U.S. MAIL

Gary Milliman
City Manager
Brookings City Hall
898 Elk Dr.
Brookings, OR 97415

gmilliman@brookings.or.us

RE: Newly adopted ordinance likely unconstitutional

Dear Mr. Milliman,

It has come to the ACLU of Oregon's attention that the City of Brookings ("City") has recently adopted a potentially unconstitutional ordinance prohibiting "abusive solicitation" ("Abusive Solicitation Ordinance" or "Ordinance").¹ We strongly encourage the City to consider its potential liability under the United States and Oregon Constitutions in enforcing this ordinance.

The Abusive Solicitation Ordinance prohibits solicitation that is accompanied by "offensive" or "threatening" conduct.² Its provisions enumerate five examples of what constitutes "offensive" or "threatening" solicitation, though it can encompass other unenumerated activities.³ Two of these activities, those listed under 9.10.345(C)(4)(a) and (e), involve expression that are protected under the First and Fourteenth Amendments of the United States Constitution, as well as Article I, sections 8, 20, and 21, of the Oregon Constitution. Therefore, as the following discussion reveals, their suppression is unlawful.

Freedom of Expression

1. First Amendment of the United States Constitution

The U.S. Supreme Court has been clear that charitable solicitations, whether on the street or door-to-door, involve speech interests that the First Amendment protects.⁴ Laws that regulate the

¹ Brookings Municipal Ordinance 9.10.345

² 9.10.345(C)(4).

³ *Id.*

⁴ *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 632 (1980) (following a lengthy discussion of precedent).

solicitation of financial support “must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues, and for the reality that without solicitation the flow of such information and advocacy would likely cease.”⁵ Solicitation is a form of speech necessary to a free and democratic society.

The Abusive Solicitation Ordinance prohibits continuing a particular type of solicitation, a “request made to obtain an immediate donation of money or other item of value.”⁶ As such, the Abusive Solicitation Ordinance is content-based. In public forums, content-based laws are presumptively unconstitutional and may be justified only when the government proves that the law is narrowly tailored to serve a compelling state interest.⁷ To satisfy this test, the government must show that the law or ordinance uses the “least restrictive means” of achieving that vital interest.⁸

Historically, courts grappled with determining whether blanket restrictions on solicitation, panhandling, and other speech were content-based or content-neutral,⁹ affecting the rigor of scrutiny applied. The U.S. Supreme Court clarified this issue in its recent decision, *Reed v. Town of Gilbert, Ariz.*¹⁰ A regulation is content-based when it applies to particular speech because of the topic or idea expressed.¹¹ Laws targeting a specific subject matter are content-based even when they do not distinguish between viewpoints within that subject matter.¹² Laws can draw content-based distinctions on their face, while others will do so in a way that is facially neutral.¹³ When the law is content-based on its face, it undergoes strict scrutiny *regardless* of the “government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.”¹⁴

Subsequent decisions suggest that laws like the Abusive Solicitation Ordinance are content-based under the *Reed* analysis, thereby requiring strict scrutiny. For example, in *Thayer v. City of Worcester, Massachusetts*, the First Circuit Court of Appeals examined a municipal ordinance that made it unlawful for any person to beg, panhandle, or solicit any other person in an aggressive manner.¹⁵ The Court originally found the law to be content-neutral because it was “not designed to suppress messages expressed by panhandlers, Girl Scouts, the Salvation Army,

⁵ *Id.* at 632.

⁶ 9.10.345(C)(1) and (C)(4)(a).

⁷ *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218, 2225 (2015) (citing *R.A.V. v. St. Paul*, 505 U.S. 377, 395 (1992); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991)).

⁸ *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004).

⁹ For a discussion, see Jing Zhang, *The Panhandlers’ Dialogue: Are Restrictions on Panhandling Content-Neutral Under the First Amendment?*, 10 SEVENTH CIRCUIT REV. 442 (2015), at <http://www.kentlaw.iit.edu/Documents/Academic Programs/7CR/v10 -2/zhang.pdf>.

¹⁰ *Reed*, 135 S.Ct. at 2226-28 (overruling the Ninth Circuit Court of Appeals, which had found a municipality’s sign ordinance to be content-neutral). Note: The Ninth Circuit had also found a street solicitation law to be content-neutral, but this decision predated the *Reed* case. See *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936 (9th Cir. 2011).

¹¹ *Id.* at 2226.

¹² *Id.* at 2230.

¹³ *Id.* at 2227.

¹⁴ *Id.* (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429 (1993)).

¹⁵ *Thayer v. City of Worcester, Massachusetts*, 755 F.3d 60, 63 (1st Cir.2014).

campaign politicians, or anyone else subject to restriction.”¹⁶ However, the U.S. Supreme Court vacated *Thayer*, remanding it for consideration in light of *Reed*.¹⁷ Accordingly, the lower court found the ordinance to be content-based.¹⁸ Other courts have come to the same conclusion.¹⁹

As a content-based restriction, the Abusive Solicitation Ordinance will undergo strict scrutiny, a test it cannot pass. While public safety certainly constitutes a compelling state interest, the law is not narrowly tailored to meet that goal. First, some sections of the Ordinance encompass behavior that has a weak relationship to public safety (continued solicitation, without more, endangers no one). Second, the Ordinance does not use the least restrictive means necessary (the law could just prohibit violence, disorderly conduct, threats of physical violence, or the provocation of imminent and likely violence or disorderly conduct, without encroaching on protected speech). Third, the Ordinance encompasses behaviors already prohibited under existing laws (e.g. Brookings Code 12.10.040 prohibition against blocking sidewalks, ORS 163.190 menacing, ORS 166.065 harassment, 166.023 and 166.025 disorderly conduct, etc.).

Courts may also analyze regulations of solicitation for overbreadth,²⁰ thereby ensuring that those regulations do not have a chilling effect on constitutionally protected speech.²¹ “[A] law may be invalidated as overbroad if ‘a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.’”²² Subsections (C)(4)(a) and (e) of the Abusive Solicitation Ordinance are likely overbroad because they encompass a substantial amount of constitutionally protected activity. A variety of protected words, signs, gestures, and requests could fall within its realm, merely because the solicitee declined the invitation or found it to be offensive.

2. Article I, section 8, of the Oregon Constitution

Article I, section 8, of the Oregon Constitution states that “[n]o law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.”²³ Oregon courts analyze Article I, section 8 challenges using the *Robertson* framework.²⁴ *Robertson* categorizes laws into three groups: (1) laws that focus on the content of speech or writing; (2) laws that focus on forbidden effects, but expressly prohibit expression used to achieve those effects; and (3) laws that focus on forbidden effects, making no reference to expression at all.²⁵

¹⁶ *Id.* at 71.

¹⁷ *Thayer v. City of Worcester, Mass.*, 135 S.Ct. 2887 (2015).

¹⁸ *Thayer v. City of Worcester*, 144 F. Supp. 3d 218, 233 (D. Mass. 2015). In footnote 2, the Court states, “Simply put, *Reed* mandates a finding that [the ordinance] is content based because it targets anyone seeking to engage in a specific type of speech, i.e., solicitation of donations.” *Id.* at 234.

¹⁹ See *McLaughlin v. Lowell*, 140 F.Supp.3d 177 (D.Mass. Oct. 23, 2015); *Browne v. City of Grand Junction*, 136 F.Supp.3d 1276 (D.Col. Sep. 30, 2015); *Norton v. City of Springfield*, 806 F.3d 411 (7th Cir.2015) (remanding to district court to enjoin city’s anti-panhandling ordinance in light of *Reed*’s mandate that such ordinances be deemed content based).

²⁰ *Id.* at 634.

²¹ *Comite*, 657 F.3d at 944 (citing *Virginia v. Hicks*, 539 U.S. 113, 119 (2003)).

²² *United States v. Stevens*, 130 S.Ct. 1577, 1587 (2010) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 n. 6 (2008)).

²³ Or. Const. art. I, § 8

²⁴ *State v. Plowman*, 314 Or. 157, 163-64 (1992).

²⁵ *Id.* at 164. (Summarizing *State v. Robertson*, 293 Or. 402, 417-418 (1982)).

The City of Brookings prohibits “abusive solicitation.”²⁶ The examples of “abusive solicitation” provided in subsections 9.10.345(C)(1) and 9.10.345(C)(4)(a) and (c) implicate different categories of the *Robinson* framework. Accordingly, we will analyze them separately below.

a. 9.10.345(C)(1) and (4)(a)

Subsection (C)(4)(a) of the Ordinance prohibits “intentionally, recklessly or knowingly engaging in offensive or threatening conduct immediately before, during, or immediately after making a solicitation, including...[c]ontinuing to solicit once the person being solicited has declined the request.” Subsection (C)(1) defines “solicitation” as “an in-person request made to obtain an immediate donation of money or other item of value.” By proscribing such requests, the Ordinance focuses on the content of speech or writing. Therefore, these subsections of the Ordinance fall under category 1 of the *Robertson* framework.²⁷ Such laws are upheld only under very limited circumstances, and a person’s solicitation or continued solicitation is not among them. Therefore, subsection 9.10.345(C)(1) and 4(a) will not satisfy Article I, section 8, of the Oregon Constitution.

Laws directed at the substance of any opinion or subject are constitutional only when they fall within a narrow set of historical exceptions to free expression that existed at the time that the United States or Oregon Constitutions were adopted.²⁸ The party defending the challenged law bears the responsibility of demonstrating that it involves a form of expression which the adopters did not intend to protect.²⁹ Examples of such historical exceptions include perjury, verbal assistance in crime, theft, forgery, fraud, and their contemporary variants. *Id.* Otherwise, Oregonians are free to speak, write, or print on “any subject whatever,”³⁰ including requests for immediate donations as prohibited in the Abusive Solicitation Ordinance.

Solicitation does not qualify as a historical exception to freedom of expression. The Court has rejected such arguments in multiple cases.³¹ Furthermore, it has never been argued in Oregon courts that begging (i.e. poor people soliciting for relief) was an exception, and for good reasons. Even though laws targeting poverty and vagrancy, including those prohibiting begging, date back

²⁶ 9.10.345(B) (“No person shall engage in abusive solicitation as defined in this section”).

²⁷ 9.10.345(C)(1) and 4(a) would fail under a category 2 *Robertson* analysis, as well. See analysis of 9.10.345(C)(4)(e) below. Furthermore, the Abusive Solicitation ordinance does not qualify as a time, place, and manner restriction under Article I, section 8, which has a more rigorous standard than the First Amendment of the United States. See *City of Portland v. Tidyman*, 306 OR. 174, 186-190 (1988).

²⁸ *Robertson*, 293 Or. at 412. The only other situation in which the courts have upheld laws targeting expression involved public officials whose statements were incompatible with their professional responsibilities in the courts. See *In re Conduct of Lasswell*, 296 Or. 121 (1983).

²⁹ *State v. Henry*, 302 Or. 510, 521 (1987).

³⁰ Or. Const. art. I, § 8

³¹ *Moser v. Frohnmayer*, 315 Or. 372, 378 (1993) (rejecting the State’s arguments that restrictions on “commercial solicitations were well established when the first guarantees of freedoms of expression were adopted”); *City of Hillsboro v. Purcell*, 306 Or. 547, 555 (1988) (speculating that historic laws regulating peddling may be seen as the lawmakers’ acceptance rather than rejection of door-to-door sales as a legitimate way of doing business); *City of Eugene v. Miller*, 318 Or. 480, 486 (1994) (ordinance regarding sidewalk vending violated Article I, section 8, as it unreasonably impinged on dissemination of expressive material that was itself protected by constitutional provision).

to Fourteenth Century England,³² these laws were never about speech itself. Rather, the laws were aimed at the type of people engaged in it.³³ These so-called “poor laws” targeted the poor as a class, sometimes denying all poor people a set of rights (e.g. the Articles of Confederation explicitly excluded paupers and vagabonds equal rights under the law),³⁴ while at other times, enumerating behaviors—including begging—as an element of what makes a person a “vagrant.”³⁵ Poor laws also intended to address labor shortages (through forced labor),³⁶ financial burdens associated with providing relief (through banishment from the community),³⁷ and crime (by targeting the poor before they have the opportunity to violate the law).³⁸ Fundamentally, these laws were about animus towards the poor, not speech. No evidence exists to suggest that the adopters of the United States or Oregon Constitutions intended to exclude solicitation generally, or begging specifically, from protection. In fact, solicitation similar to that defined in the Abusive Solicitation Ordinance has been found to be protected speech in both state and federal courts.³⁹

The mere fact that a person *continues* to engage in protected activity does not justify state intervention. For example, in *State v. Rangle*, the Court examined a stalking statute that prohibited repeated and unwanted contact that reasonably caused alarm or coercion and reasonably led the victim to fear for their personal safety or that of a family member.⁴⁰ The Court determined that a speech-based contact is punishable only if it constitutes a threat that reasonably instills in the addressee a fear of imminent and serious personal violence from speaker.⁴¹ Repeated communication alone would be insufficient.

³² See William P. Quigley, *Five Hundred Years of English Poor Laws, 1349-1834: Regulating the Working and Nonworking Poor*, 30 AKRON. L. REV. 73, 83 (1996)

³³ See, e.g., *Id.* at 106 (the poor were seen as immoral); Caleb Foote, *Vagrancy-Type Law and its Administration*, 104 U. PA. L. REV. 603, 616 (1956) (Idle and unemployed individuals were viewed with suspicion); Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons from American Cities*, 66 TUL. L. REV. 631, 638-640 (1992) (vagrancy laws were precautionary, targeting poor people because of their propensity towards crime).

³⁴ See *Id.* at 643-48 (citing the text of Article IV of the Articles of Confederation: “The free inhabitants of each of these States, *paupers, vagabonds, fugitives from justice excepted*, shall be entitled to all the privileges and immunities of free citizens in the several States, and the people of each State shall have free ingress and egress to and from any other State” (emphasis added)).

³⁵ Forrest W. Lacey, *Vagrancy and Other Crimes of Person Condition*, 66 HARV. L. REV. 1203, 1208-9 (1953); similarly, an early Oregon statute provided: “All idle or dissolute persons who have no visible means of living, or lawful occupation or employment by which to earn a living; all persons who shall be found within the state of Oregon begging the means of support in public places, or from house to house, or who shall procure a child or children so to do; all person’s who live in or about houses of ill-fame or of ill-repute, -- *shall be deemed vagrants...*” General Laws of Oregon, section 1958 (1887) [emphasis added].

³⁶ See *supra* note 32, at 85.

³⁷ Foote, *supra* at 616.

³⁸ *Id.*

³⁹ For example, see *McLaughlin*, 140 F.Supp.3d 177; *Browne*, 136 F.Supp.3d 1276; *Norton*, 806 F.3d 411; *Thayer*, 144 F. Supp. 3d 218. See also *ACLU v. City of Las Vegas*, 466 F.3d 784 (9th Cir. 2006); *Clatterbuck v. City of Charlottesville*, 708 F.3d 549 (4th Cir. 2013); *Speet v. Schuette*, 726 F.3d 867 (6th Cir. 2013); *Iskcon of Potomac, Inc. v. Kennedy*, 61 F.3d 949 (D.C. Cir. 1995) (note that even when the courts have upheld regulations, they do so acknowledging that this sort of speech is protected). See also *State v. Boehler*, 228 Ariz. 33 (2011); *People v. Hoffstead*, 28 Misc.3d 16 (2010); *Benefit v. City of Cambridge*, 424 Mass. 918 (1997); *Ledford v. State*, 652 So.2d 1254 (1995)

⁴⁰ *Rangel*, 328 Or. 294, 296 (1999).

⁴¹ *Id.* at 302-03.

Therefore, if subsection (C)(4)(a) of the Ordinance is read to exemplify abusive or threatening conduct as mere continued communicative activity, it cannot be prohibited. Individuals do not become less free to express themselves simply because they do so more often or for longer periods of time. “Expressions do not fall within or without scope of State Constitution's free speech guarantees based on particularity or intensity of their message.”⁴² Lawmakers lack the authority to dictate how much is enough. Similarly, the fact that the solicitee declined the request has no bearing on the analysis. Neither persistence nor popularity dilutes the right to self-expression.

b. 9.10.345(C)(4)(e)

In subsection (C)(4)(e), the Ordinance prohibits “intentionally, recklessly or knowingly engaging in offensive or threatening conduct immediately before, during, or immediately after making a solicitation, including...[u]sing words, signage, gestures, and/or actions directed toward the person being solicited which are offensive or threatening.”⁴³ “Offensive” is defined as “conduct that has the effect of provoking or being likely to provoke an imminent violent or disorderly response.”⁴⁴

This subsection focuses on preventing a forbidden result (i.e. offending or threatening) while also explicitly prohibiting expression (i.e. words, signage, and gestures). Therefore, this subsection of the Ordinance falls under category 2 of the *Robertson* framework. Such laws are analyzed for overbreadth.⁴⁵ A law is overbroad when its terms exceed constitutional boundaries, reaching conduct protected by its guarantees⁴⁶ or, more specifically, when it “sweeps within its reach” protected speech.⁴⁷ The Ordinance violates Article I, section 8, of the Oregon Constitution because its definition of “offensive” is overbroad.⁴⁸

The Oregon Supreme Court has already determined that a similarly defined statute was overbroad.⁴⁹ In *Johnson*, the defendant challenged an Oregon statute that made it an offense to “harass or annoy another person by...abusive words or gestures in a manner intended and likely to provoke a violent response.”⁵⁰ The Court took issue with the statute for multiple reasons. First, the statute did not actually prevent the purported effect of violence⁵¹ but, rather, merely proscribed harassment or annoyance.⁵² Second, the *Johnson* Court found the statute to extend to protected types of expression, emphasizing that the legislature cannot criminalize protected

⁴² *Vannatta v. Keisling*, 324 Or. 514, 524 (1997).

⁴³ 9.10.345(C)(4)(e).

⁴⁴ 9.10.345(C)(2).

⁴⁵ *Plowman*, 314 Or. at 164.

⁴⁶ *Roberts*, 293 Or. at 409.

⁴⁷ *Johnson*, 345 Or. 190, 196 (2008).

⁴⁸ On the other hand, the definition of “threatening,” provided under 9.10.345(C)(3) satisfies Article I, section 8. See *State v. Moyle*, 299 Or. 691 (1985).

⁴⁹ *Johnson*, 345 Or 197.

⁵⁰ *Id.* at 193.

⁵¹ *Id.* at 195. (“There is no requirement that the offender act violently, or even offer to act violently. There is no requirement that either the offender or the person to whom the remarks are addressed be the one who is likely to react violently. There is no requirement that the hearer (or anyone else) actually be put in fear of violence. There is no requirement that the hearer actually respond violently, or respond at all.”)

⁵² *Id.*

speech *even* when it seeks to prevent violence produced by it.⁵³ It noted the societal importance of such expression:

“Taunts intended and likely to produce a violent response are not limited to playgrounds and gang disputes. They extend to political, social, and economic confrontations... and thus include a wide range of protected speech.”⁵⁴

The mere fact that speech may result in violence does not justify its suppression. For these reasons, the statute was ruled overbroad.⁵⁵

The similarities between Brookings’s ordinance and the *Johnson* harassment statute are clear. Both lack the specificity necessary to actually address the harmful effect of violence: neither law requires the offender act violently or make violent threats; neither law requires that the offender or hearer be the one to react in a violent or disorderly fashion; neither law requires the hearer to be in fear of violence; and neither law requires the hearer actually respond in a way that is violent or disorderly. ‘Offensive,’ for the purposes of the Brookings ordinance, merely requires that *someone* be provoked, or that provocation be *likely*. Without actually preventing the harm of violence or disorder, the law is exposed for what it truly is: a veiled effort to target words, signage, and gestures (i.e., protected speech).

Furthermore, the Ordinance and the *Johnson* harassment statute both seek to prevent harms produced through speech, but in doing so, criminalize protected types of expression. The *Johnson* Court was clear that, even when words, signs, and gestures have the potential to elicit violent or disorderly responses, they still enjoy the robust protection of Article I, section 8. “Even when the legislature seeks to prevent violence produced by speech, it has to take care that it does not do so by criminalizing protected speech.”⁵⁶ The goal of subverting violence and disorder does not justify the suppression of broad categories of protected expression. The Brookings ban will inevitably “sweep within its reach” speech that which is protected under Article I, section 8. Therefore, for the same reasons as those discussed in *Johnson*, it is overbroad.

Lawmakers cannot circumvent the right to free expression merely by articulating a harm that the statute aims to prevent.⁵⁷ Regulations on speech must actually and narrowly address harmful effects in a manner that does not infringe on protected activity. Subsection (C)(4)(e) satisfies neither of those requirements.

Vagueness Under the United States and Oregon Constitutions

The Abusive Solicitation Ordinance violates both federal and state law, as it is unconstitutionally vague. Under the Fourteenth Amendment of the United States Constitution, laws are vague when

⁵³ *Id.* at 196.

⁵⁴ *Id.*

⁵⁵ *Id.* at 197 (“[T]he state may not suppress all speech that offends with the club of the criminal law.”).

⁵⁶ *Id.* at 196.

⁵⁷ *Moyle*, 299 Or. at 699 (“The constitutional prohibition against laws restraining speech or writing cannot be evaded simply by phrasing statutes so as to prohibit ‘causing another person to see’ or ‘to hear’ whatever the lawmakers wish to suppress”).

they allow for too much police discretion⁵⁸ or fail to provide sufficient notice of what is innocent or illegal activity.⁵⁹ Similarly, laws that are so vague that they give a judge or jury unbridled discretion in punishing defendants violate Article I, sections 20 and 21, of the Oregon Constitution.⁶⁰ The Ordinance prohibits, in part, words, signage, gestures, and/or actions that are offensive.⁶¹ The Ordinance defines “offensive” as “conduct that has the effect of provoking or being likely to provoke an imminent violent or disorderly response.”⁶² There is no further guidance on what constitutes a “disorderly response,” nor what may be likely to provoke such a response. Therefore, that definition fails to define “offensive” with enough precision to satisfy the United States Constitution, or with the “reasonable degree of certainty” required by the Oregon Constitution.⁶³

In *Papachristou*, the United States Supreme Court struck down a vagrancy ordinance because it failed “to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden,” and it encouraged arbitrary and erratic arrests and convictions.⁶⁴ To satisfy the Fourteenth Amendment Due Process Clause, laws must communicate to the potential offender and the police what they prohibit.⁶⁵ This provides the individual with an opportunity to align his or herself with the law, and it guides the officer, ensuring fair and equal enforcement.

In *Hodges*, the Oregon Supreme Court explained that a vague statute violates the principle against *ex post facto* laws because it delegates to the jury, the legislative power of deciding what the law will be.⁶⁶ For example, in *Hodges*, the Court addressed a statute that authorized punishment of any person who does any act which manifestly tends to cause any child to become delinquent.⁶⁷ The statute was unconstitutionally vague because its language was so loose that it allowed for the prosecution to selectively rid the community of individuals deemed undesirable, and it provided no basis for the judge or jury to decide how to move the case forward.⁶⁸ “[T]he free-wheeling power to legislate so as to find a defendant guilty should not be institutionalized in a criminal statute.”⁶⁹

Like the statutes before the *Papachristou* and *Hodges* courts, the Abusive Solicitation Ordinance provides little notice to an individual as to what behavior is prohibited. Furthermore, the Ordinance encourages the selective enforcement and application of the law against individuals deemed undesirable. The Ordinance does not define what constitutes a “disorderly response.” It is enforceable based on any likelihood of an unpredictable, undefined, and unrealized response. For these reasons, the Abusive Solicitation Ordinance is unconstitutionally vague under the United States and Oregon Constitutions.

⁵⁸ *Papachristou v. Jacksonville*, 405 U.S. 156 (1972).

⁵⁹ *City of Chicago v. Morales*, 521 U.S. 41 (1999).

⁶⁰ *State v. Graves*, 299 Or. 189, 195 (1985).

⁶¹ 9.10.345(C)(4)(e).

⁶² 9.10.345(C)(2).

⁶³ *Graves*, 299 Or at 195.

⁶⁴ *Papachristo*, 405 U.S. at 162.

⁶⁵ *Id.*

⁶⁶ *State v. Hodges*, 254 Or. 21, 27 (1969) (en banc).

⁶⁷ *Id.* at 22.

⁶⁸ *Id.* at 27-28.

⁶⁹ *Id.* at 28.

Conclusion

The ACLU of Oregon strongly encourages the City of Brookings to re-evaluate the constitutionality of the Abusive Solicitation Ordinance and consider amendments that would protect the constitutional rights of its residents and visitors to solicit donations. Should the City want to discuss the contents of this letter further, please do not hesitate to reach out. I can be reached by telephone at 503-227-6928 or by e-mail at mdossantos@aclu-or.org.

Sincerely,



Mat dos Santos
Legal Director
American Civil Liberties Union of Oregon

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LEGAL MEMORANDUM

City Council Workshop

TO: Mayor Ron Hedenskog and Members of the City Council; City Manager Gary Milliman

FR: Martha D. Rice, City Attorney

DT: October 3, 2016

RE: ACLU Letter Regarding Ordinance No. 16-0-754 (§ 2 Abusive Solicitation)

A. Background

On March 28, 2016, the City Council adopted Ordinance 16-0-754 adding Section 9.10.345, Abusive Solicitation to the Brookings Municipal Code. The intent of the ordinance is to give city police a tool in curbing what has been described as “harassing” and “threatening” behavior by persons outside of local business establishments making solicitations of patrons to those businesses. In late June, the City received a letter from a Ms. Mary Rowe expressing her concern that the ordinance’s definition of “abusive solicitation” is not consistent with cases interpreting Oregon’s constitutional protections of free speech and expression. About one month later, in late July, the City received a letter for the ACLU of Oregon expressing similar, yet more specific concerns regarding the City’s definition of “abusive solicitation” in the ordinance. The letter argues that subsections (a) and (e) of the definition of “abusive solicitation” involve expression that are protected under both the U.S. Constitution and the Oregon Constitution.

On Monday, August 15, I had a phone conversation with Mr. Mat dos Santos, Legal Director and signatory of the ACLU letter, regarding the City’s ordinance. The conversation went very well and Mr. dos Santos was going to reach out to his staff regarding the possibility of coordinating acceptable revisions to the City’s ordinance. As of the writing of this memorandum, I have yet to have further conversations with Mr. dos Santos or his staff, although I did just receive an email requesting further follow-up. It is worth noting that the ACLU finds itself in the challenging position of being pleased to hear that the City is willing to consider revisions to its ordinance to address the ACLU’s concerns, while also not being particularly interested in affirmatively endorsing or approving of laws that are inconsistent with its policy position on certain issues, even if the ordinance is not illegal per se.

B. Analysis - ACLU Position on Definition of “Abusive Solicitation”

The ACLU’s letter takes issue with some of the definitions of abusive solicitation; specifically those contained in BMC 9.10.345(C)(4)(a) and (e), as involving expression that are protected under the both the federal and state constitutions.ⁱ

BMC 9.10.345(C)(4) states that “abusive solicitation” “means intentionally, recklessly or knowingly engaging in *offensive* or threatening conduct immediately before, during, or immediately after making a solicitation, including, but not limited to, the following listed conduct:

- a. Continuing to solicit once the person being solicited has declined the request;***
- b. Blocking or impeding the passage of the person solicited;
- c. Following the person solicited by proceeding behind, ahead or alongside of him or her after the person solicited has declined the request;
- d. Touching the solicited person without the solicited person’s consent;
- e. Using words, signage, gestures, and/or actions directed toward the person being solicited which are *offensive* or threatening.”

[Emphasis added.]

The ACLU argues that the above-emphasized portions of the city’s ordinance are constitutionally overbroad (meaning that the provisions prohibit more speech than is necessary to advance the City’s interest) because they encompass a substantial amount of protected expressive activity.

Subparagraph (a) – Continued Solicitation

The “continued solicitation” prohibition contained in (C)(4)(a) prohibits a person from making solicitations of another person after that person has declined the initial request. Without getting into the legalese and the details of constitutional case law, the ACLU essentially argues that such continued solicitation is constitutionally protected speech because while it may be annoying or uncomfortable to be repeatedly solicited by the same person after saying “no,” for a person to simply repeat protected speech over and over does not then automatically place that speech into a category of non-protected speech.

Subparagraph (e) – Offensive or Threatening Conduct

The “offensive or threatening conduct” prohibition contained in (C)(4)(e) is challenged by the ACLU based on its inclusion of the term “offensive.” “Offensive” conduct is defined in BMC 9.10.345(C)(2) as “conduct that has the effect of provoking or being likely to provoke an imminent violent or disorderly response.” The challenge again claims that this provision

is overbroad. The argument stems from the use of the phrase “or likely to provoke” an imminent violent or disorderly response. According to the Oregon Supreme Court, in order to constitutionally prohibit such “offensive” speech, the speech must *actually* provoke a violent response and that response must be imminent, not delayed.ⁱⁱ Simply being “likely” to provoke a violent response is not enough.

In addition, the ACLU challenges the “offensive” definition based on a vagueness argument, meaning that one cannot readily tell what conduct is specifically prohibited and the law allows for too much discretion on the part of law enforcement. The vagueness argument includes the “likely to provoke” phrase as well as the use of the term “disorderly” without further definition. What one person may consider “likely to provoke” a violent response may be very different from another equally reasonable person would consider “likely to provoke” a violent response. Because there is room for such disagreement, the phrase is not specific enough to notify the public of what speech is specifically prohibited. In addition, the inclusion of the term “disorderly” in the definition of “offensive” is challenged as vague because the term disorderly is not further defined and therefore, “disorderly” is also subject to wide-open interpretation on the part of the public and law enforcement alike.

C. Conclusion/ Recommendation

It is my opinion that the specific provisions of the city’s ordinance identified in this memorandum are susceptible to the arguments set forth by the ACLU in its letter of July 19, 2016, and, therefore, make the city vulnerable to a legal challenge in court. Therefore, it is my recommendation that the City Council consider adopting revisions to the ordinance to address these vulnerabilities at a future council meeting. Such revisions may address the issues identified in this memo while keeping the majority of the ordinance intact.

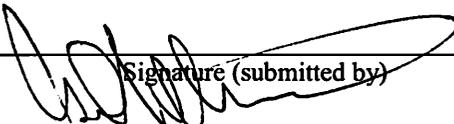
ⁱ Specifically, the ACLU cites the First Amendment to the US Constitution (Freedom of Speech): “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances”; and Section 8 of Article I of the Oregon Constitution (Freedom of Speech and Press): “No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.”

ⁱⁱ State v. Johnson (2008) 345 OR 190, 195.

CITY OF BROOKINGS
COUNCIL WORKSHOP REPORT

Meeting Date: October 3, 2016

Originating Dept: City Manager



Signature (submitted by)

City Manager Approval

Subject: Friends of Music Azalea Park Request

Background/Discussion:

The Friends of Music have requested that the City consider allowing them to construct a concert hall in Azalea Park. See attached letter from Marshall Thompson.

Staff believes that Azalea Park is becoming quite busy with the number of activities already underway and planned there. Staff has suggested to FOM that they contact the owners of vacant lands adjacent to the park and at other locations within the community, including Southwestern Oregon Community College, to pursue a possible site or joint venture.

Attachment(s):

- a. Letter from Friends of Music

August 29, 2016

Marshall Thompson, FOM Project Manager
17455 Deer Park Dr.
Brookings, OR 97415

Gary Milliman, City Manager
City of Brookings
898 Elk Dr.
Brookings, OR 97415

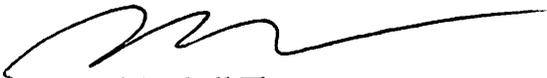
Dear Gary:

As I mentioned the last time we spoke, Friends of Music is still looking for the right circumstances to build a concert hall in Brookings. A concept came up in discussion today with Tom Broaderick. I thought I'd run it by you for comment.

Would it be possible for FOM to build a concert hall in Azalea Park, or on other City property, in somewhat the same manner Elmo Williams built the Cappella? Maybe there is enough unused land on City property with enough close by parking. Maybe we could come to agreement on the specifics of a long term lease in which case FOM might pay for and construct a concert hall that works for both FOM and the City. We would, of course, need to discuss the management and use of such a facility.

We appreciate very much your past willingness to explore options for the Friends of Music and the City of Brookings to work together in an effort to establish a concert hall that could be widely used. Your comment on the above concept, or any other concept for that matter, would be welcome. **Please feel free to email any response you might have.**

Sincerely,



Marshall Thompson
marshall_t@comcast.net
530-570-1698

Mr. William C. ...
City of ...
...

Mr. William C. ...
City of ...
...

Dear Sir:

I received the last time ...
...

World ...
...

We appreciate ...
...

Mr. William C. ...
City of ...
...

CITY OF BROOKINGS

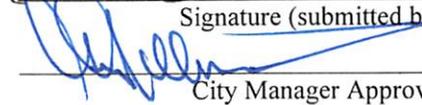
Council WORKSHOP Report

Meeting Date: October 3, 2016

Originating Dept: Administration



Signature (submitted by)



City Manager Approval

Subject: Document Scanning and Document Management

Financial Impact: To be determined

Background/Discussion:

- Oregon Citizens have an expectation of government transparency and ease of access to public documents.
- Document storage does not equal document management.
- Storing documents beyond their Retention Schedule is a liability.

The City is ready to move into the digital era. In the City Recorder's office alone, it is estimated that over 80,000 paper documents are stored in filing cabinets. This is just a drop in the bucket compared to the volume of documents maintained in other departments within the City. Oregon Secretary of State Archives Division has recently updated records retention laws to allow organizations to now maintain documents in a format other than their original paper format i.e. electronically, provided certain criteria are met.

Oregon Administrative Rule 166-Division 17 addresses electronic records and is attached here.

The State has an electronic records management system in place called Oregon Records Management Solution (ORMS) to which municipal agencies may subscribe. Many Oregon cities are coming on board incrementally. The State Archives Division offers on-site training included in the monthly fee; the agreement with the consultant includes 24/7 tech support; the system includes automated retention/disposal of records; the system is Department of Defense certified and is already vetted; the system is Cloud-based and requires no equipment or software purchases for start-up.

It is the City Manager's goal to ultimately develop a records system whereby the public can access all public records electronically and remotely; select documents they wish to copy; and download the desired documents. The ORMS can easily be linked to the City's website making documents readily available.

The cost to subscribe to the document management system is based on the number of users. A pricing breakdown is attached.

There is another piece to the puzzle. The existing hardcopy documents currently in storage must be scanned and migrated in to the document management system either immediately or over

time. This will not be an inexpensive undertaking. Staff has met to discuss scanning needs and priorities. Departments are embarking on inventories. Price quotes have been solicited.

Staff is seeking direction from Council regarding the value of document transparency, document retrieval efficiency and the reduction of excessive quantities of hard copy documents which require huge amounts of storage space.

Policy Consideration: This proposal is consistent with the City's strategic Plan, Goal 1, Objective 1.7 "Assure internal consistency and efficiency."

Attachments:

- a. Excerpts from State Archives Division presentation "Records Management for the 21st Century"
- b. OAR 166-Division 17 "Electronic Records"
- c. ORMS Public Private Partnership
- d. ORMS Subscription Pricing
- e. News Articles

Records Management For the 21st Century

Practical Approaches for Government

Mary Beth Herkert, State Archivist
Oregon State Archives

Why worry about RM?

Poor RM is expensive, inefficient, risky

- Employees spend **25-40%** of their day searching for the right information to complete a given task.
- Organizations on average retrieve only about **22%** of records relevant to an e-discovery case.
- Settling out of court is often cheaper than defending your agency

Why worry about RM?

- DuPont reviewed 75 million pages and found *half* were past retention. Cost for review of records past retention - **\$12 million**
- **9%** of agency/corporate **annual** budgets often dedicated to e-discovery
 - The Secretary of State spent **2.5%** of its **biennial** budget in setting up ERMS. Ongoing licensing and maintenance: less than **1%** biennially



Know The Laws

Oregon Public Records Law – Retention & Disposition

“Public record” means any information that:

- (A) Is **prepared, owned, used or retained** by a state agency or political subdivision;
- (B) **Relates to an activity, transaction or function** of a state agency or political subdivision; and
- (C) Is **necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs** of the state agency or political subdivision. – **ORS 192.005 (5)**

Each state agency or political subdivision shall maintain a public record or accurate copy of a public record in accordance with a retention schedule authorized under the law without regard to the technology or medium used to create or communicate the record. – **ORS 192.108**

Oregon Public Records Law - Access

“Public record” includes any writing containing information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics. – **ORS 192.410 (4)**

DOJ oversees access & disclosure

Oregon Public Meetings Law

The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of **ORS 192.610** to **192.690** that decisions of governing bodies be arrived at openly.

– **ORS 192.620**

These laws are **Inclusive**, not **Exclusive**

AND

DO NOT distinguish between home and office or personal or publicly owned device: public work is public work

New Rules for Electronic Records

OAR Chapter 166 - Division 17



OAR Chapter 166-Division 17

166-017-0015 - General Requirements

Agencies:

- Must ensure that all public records, regardless of format are retained according to applicable records retention schedules approved by the State Archivist
- Must develop policies & procedures that address access, use, retention and disposition and must perform periodic reviews to ensure compliance
- May contract with external vendors for storage or management of electronic records. Vendors **must** comply with all rules in Division 17
- Must not enter into a contract if the contract will impair public access or if the custody of the records is transferred, either purposefully or inadvertently, from the agency to the hosting entity
- Contracts for storage of electronic records **must** require the vendor to return all electronic data files and indexing information to the agency at the expiration of the contract or upon vendor failure to comply with OAR 166, Division 17

OAR Chapter 166-Division 17

166-017-0015 - General Requirements (con't.)

- Must ensure that electronic public records are accessible to the public for the entire authorized retention period and non-permanent records are destroyed at the end of their authorized retention period
- Must also maintain confidentiality for electronic public records that are exempt from public disclosure.

166-017-0025 - Electronic Records Management Systems

If an agency purchases an Electronic Records Management System (ERMS) to manage electronic records, the system must be Dept. of Defense certified (DoD 5015.2-STD, "Design Criteria Standard for Electronic Records Management Applications, Version 2 or 3)."

OAR Chapter 166-Division 17

166-017-0045 - Electronic Record as Official Copy of a Public Record

Electronic records (including digital images) may serve as the official copy of a public record under the following conditions:

Public records with a scheduled retention period of less than 100 years may be stored in electronic format only as long as the standards and requirements specified in OAR 166, Division 17 are met.

Public records with a scheduled retention period of 100 years or more may be stored on electronic records systems provided that the original records are retained in hard copy or on microfilm for the entire scheduled retention period, and in compliance with OAR 166

OAR Chapter 166-Division 17

166-017-0045 - Electronic Record as Official Copy of a Public Record (con't.)

Agencies may petition the State Archivist, in writing for exceptions to 166-017-0045(2). The petition **must** specify whether the records are stored in a DoD 5015.2 certified system and state the file format for the records. The State Archivist will either grant or deny the request based on the information provided.

At a minimum, records stored in an electronic format, with a scheduled retention period of 100 years or more must be maintained in accordance with one of the following:

- (a) **TIFF 6.0** (picture)
- (b) ISO 32000-1 2008 **PDF** (text)
- (c) ISO/IEC 11172-3 1993 MPEG Layer III Audio Encoding (**MP3**) (audio)
- (d) ISO/IEC 14496-14 2003 MPEG 4 File Format (**MP4**), Version 2 (video)

OAR Chapter 166-Division 17

166-017-0085 - Records Retention Requirements

Agencies must develop & adopt policies and procedures to ensure electronic records are retained & managed according to their authorized records retention schedule approved by the State Archivist. They **must** include provisions for:

- Scheduling the retention & disposition of all electronic records
- Identifying, maintaining & protecting essential records & systems
- Procedures for regular recopying, reformatting & other maintenance to ensure retention, usability & accessibility for the entire authorized retention period.

166-017-0095 - Use of Alternate Formats and New Technologies for Public Records

- New formats or technologies for public records **must** comply with requirements of Oregon Revised Statutes and OAR 166.
- Agencies utilizing private records storage facilities (i.e. cloud storage) the agency must ensure that they maintain ownership of all of the agency's public records.

Why ERMS?

- Manual RM doesn't work in electronic world
 - **Too much stuff**
 - No physical reminders
 - Copies abound, not much administration
 - Security a big concern
 - PR requests & e-discovery = time and \$
 - Files need monitoring to ensure ongoing access

ERMS Benefits

Government Efficiency

- Paper and electronic information managed together
- Dramatic improvements in response time for public records and e-discovery requests = **a happy public**
- Server space reduction: less unnecessary redundancy
- IT resources available for other projects

ERMS Benefits

Transparency & Accountability

- Information is easy to locate and find
- Rules are consistently applied to all information
- Security classifications control access
- Audit trails of all actions taken
- Information created is systematically and routinely managed and maintained.

ERMS Options

- Agency standalone system
 - Must be DoD 5015.2-STD certified*
 - Different software options, but look closely: Document Management **DOES NOT** equal Records Management
- Statewide  ERMS system
 - Over 40 state & local agencies implementing
 - Uses HP Records Manager software
 - Agencies pay per user, no hardware or software costs
 - Support provided by State Archives & Chaves Consulting



► [The Oregon Administrative Rules contain OARs filed through August 15, 2016](#) ◄

QUESTIONS ABOUT THE CONTENT OR MEANING OF THIS AGENCY'S RULES?
[CLICK HERE TO ACCESS RULES COORDINATOR CONTACT INFORMATION](#)

SECRETARY OF STATE, ARCHIVES DIVISION

DIVISION 17

ELECTRONIC RECORDS

166-017-0005

Purpose

Agencies must ensure access to all public records as defined by ORS 192.410 to 192.505 for the entire length of the retention period approved by the State Archivist. Electronic public records are particularly susceptible to accidental deletion, damage and obsolescence. These rules help to ensure that public records maintained in electronic format are accessible for their scheduled retention period.

Stat. Auth.: ORS 192.050, 192.060 & 192.105
 Stats. Implemented: 357.825(2), 357.855 & 357.895
 Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0010

Definitions

In addition to the definitions contained in OAR 166-005-0010, the following definitions apply to this division:

- (1) "AIIM" — Association for Information and Image Management.
- (2) "ANSI" — American National Standards Institute.
- (3) "ASCII" — American Standard Code for Information Interchange; A standard, seven-bit character set for use by digital computers, which includes 96 displaying symbols (letters, digits, punctuation) and 32 control codes (line feed, newline, tab, etc.).
- (4) "Cloud storage" is a model of networked enterprise storage where data is stored in virtualized pools of storage which may be hosted by third parties.
- (5) "Digitization" means the process of transforming analog material into electronic form, especially for storage and use in a computer.
- (6) "DoD" — Department of Defense.
- (7) "DPI" — Dots per inch; refers to the number of pixels contained in a linear inch.
- (8) "Electronic record" means any information recorded in a form that requires a machine to process and access the information.
- (9) "Electronic records system" is a generic term to indicate any combination of hardware, media or storage, and software used to store electronic records.
- (10) "Electronic records management system (ERMS)" means commercial or open source purpose-built software used by an organization to manage records from creation to final disposition. The system's primary functions are categorizing and locating records and identifying records that are due for disposition. The Electronic Records Management System also stores, retrieves and may dispose of the electronic records that are stored in its repository.
- (11) "Hybrid micrographic system" means a system that combines a micrographic/microfilm analog system with electronic, digital technology.
- (12) "IEC" — International Electrotechnical Commission.
- (13) "ISO" — International Organization for Standardization.

(14) "Magnetic media" means any type of storage medium that utilizes magnetic patterns to represent information.

(15) "NIST SP" — National Institute of Standards and Technology Special Publication

(16) "Open format" means a data format that is defined in complete detail and that allows transformation of the data to other formats without loss of information. An open format may be either standards-based or proprietary.

(17) "Optical media" means a platter used to store large quantities of data that can be read using light.

(18) "PDF" — Portable Document Format.

(19) "TIFF" — Tagged Image File Format.

(20) "WORM" — Write once, read many; refers to a type of optical disk which cannot be erased or amended.

Stat. Auth.: ORS 192.050, 192.060 & 192.105

Stats. Implemented: ORS 357.825(2), 357.855 & 357.895

Hist.: OSA 2-1994, f. 1-28-94, cert. ef. 4-1-94; OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0015

General Requirements

(1) Agencies must ensure that all public records in all formats or mediums, including electronic, are maintained in accordance with an applicable records retention schedule approved by the State Archivist.

(2) Agencies must develop policies and procedures and perform periodic reviews to monitor compliance to agency policies regarding access, use, retention, and disposition of electronic records.

(3) In accordance with their contracting authority, agencies may contract with external vendors for the storage or management of electronic records. The vendors must comply with all rules in OAR 166, Division 17. Agencies must not enter into a contract with any person or entity if the contract will impair the right of the public to inspect or copy the agency's nonexempt public records, including contracts where the custody of the records is transferred, either purposefully or inadvertently, from the agency to the hosting entity.

(4) Contracting agencies must ensure that vendors manage agency records in compliance with all rules in OAR 166, Division 17. Contracts for the storage of electronic records by external vendors must require the vendor to comply with OAR 166, Division 17 and to return all electronic data files and indexing information to the agency at the expiration of the contract or upon vendor failure to comply with OAR 166, Division 17.

(5) Agencies must ensure that electronic public records are accessible to the public for their entire authorized retention period and that non-permanent records are destroyed at the end of their authorized retention period. Agencies must also maintain confidentiality for electronic public records that are exempt from public disclosure.

Stat. Auth.: ORS 192.050, 192.060 & 192.105

Stats. Implemented: 357.825(2), 357.855 & 357.895

Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0025

Electronic Records Management Systems

If an agency purchases an Electronic Records Management System (ERMS) to manage electronic records, the system must be certified as conforming to DoD 5015.2-STD, "Design Criteria Standard for Electronic Records Management Applications, Version 2 or 3."

Stat. Auth.: ORS 192.050, 192.060 & 192.105

Stats. Implemented: 357.825(2), 357.855 & 357.895

Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0035

Digitization Standards

Agency electronic records systems that maintain official copies of public records must meet the following minimum requirements for digitization of paper or microfilm records into the system (as stated in OAR 166, Division 25):

(1) Documents containing fonts ten-point or larger, and containing no signatures, must be scanned at a minimum density of 200 DPI (dots per inch), when converting paper or microfilm records to electronic records.

(2) Documents containing fonts smaller than ten-point, signatures, architectural and engineering drawings, maps and line art must be scanned at a minimum density of 300 DPI.

(3) Cancelled checks must be scanned at a minimum density of 240 DPI grayscale and meet the requirements of ANSI X9.100-140 — Specifications for an Image Replacement Document.

(4) Digitized documents must be verified for accuracy and completeness after digitization and prior to the destruction of the paper or microfilm original.

(5) Scanners must be monitored for quality control. Documentation describing each inspection must be maintained for each digital imaging system and must include the date of inspection, name of inspector(s), group of documents inspected, and sample size (if applicable). Policies and procedures must conform to ANSI/AIIM MS44-R1993, Recommended Practice for Quality Control of Image Scanners and ANSI/AIIM TR25-1995 — The Use of Optical Disks for Public Records which are incorporated by reference and are available from the Association for Information and Image Management, 1100 Wayne Avenue, Suite 1100, Silver Spring, MD 20910.

(6) Targeting for converting microforms to electronic images must be done in accordance with ANSI/AIIM MS44-R1993. Technical targets used must be the IEE Std 167A-1987, Facsimile Test Chart, AIIM Scanner Test Chart #2, and for color images, the Process Ink Gamut Chart. These Charts are available from the Association of Information and Image Management, 1100 Wayne Avenue, Suite 1100, Silver Spring, MD 20910 or from the Archives Division.

(7) A hybrid micrographic system (system combining a micrographic/microfilm analog system with electronic technology) that conforms to OAR 166-025-0021 may be used.

Stat. Auth.: ORS 192.050, 192.060 & 192.105

Stats. Implemented: 357.825(2), 357.855 & 357.895

Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0045

Electronic Record as Official Copy of a Public Record

Electronic records (including digital images) may serve as the official copy of a public record under the following conditions:

(1) Public records with a scheduled retention period of less than 100 years may be stored exclusively on electronic records systems and media provided that the standards and requirements specified in OAR 166, Division 17 are met.

(2) Public records with a scheduled retention period of 100 years or more may be stored on electronic records systems provided that the original records are retained in hard copy or on microfilm for the entire scheduled retention period, and in compliance with OAR 166.

(3) Agencies may petition the State Archivist in writing for exceptions to 166-017-0045(2) for public records meeting specific preservation requirements. The petition must specify whether the records are stored in a DoD 5015.2 certified system and state the file format for the records. The State Archivist will either grant or deny the request based on the information provided.

(4) At a minimum, records stored in an electronic format, with a scheduled retention period of 100 years or more must be maintained in accordance with one of the following:

(a) TIFF 6.0 (with Intel byte order) specification (June 3, 1992), which is hereby incorporated by reference and made a part of this rule. This specification is available from Adobe Systems Incorporated, 345 Park Avenue, San Jose, CA 95110-2704.

(b) ISO 32000-1 2008 PDF specification which is hereby incorporated by reference and made part of this rule. This specification is available from Adobe Systems Incorporated, 345 Park Avenue, San Jose, CA 95110-2704.

(c) ISO/IEC 11172-3 1993 MPEG Layer III Audio Encoding (MP3) specification which is hereby incorporated by reference and made part of this rule. This specification is available from the International Organization for Standardization, Geneva, Switzerland.

(d) ISO/IEC 14496-14 2003 MPEG 4 File Format (MP4), Version 2 specification which is hereby incorporated by reference and made part of this rule. This specification is available from the International Organization for Standardization, Geneva, Switzerland.

Stat. Auth.: ORS 192.050, 192.060 & 192.105

Stats. Implemented: 357.825(2), 357.855 & 357.895

Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0055

Security Standards

Agency electronic records systems that maintain official copies of public records must meet the following minimum security requirements:

(1) Provide a method for all authorized users of the system to retrieve desired records.

(2) Provide an appropriate level of security to ensure the integrity of the records. Security controls must include, at a minimum, physical and logical access controls, backup and recovery procedures, file integrity monitoring and training for custodians and users.

Stat. Auth.: ORS 192.050, 192.060 & 192.105
 Stats. Implemented: 357.825(2), 357.855 & 357.895
 Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0065

Interoperability Standards

Agency electronic records systems that maintain official copies of public records must meet the following minimum interoperability requirements:

(1) Identify the open format or standard interchange format when necessary to permit the exchange of records on electronic media between agency electronic records systems using different software/operating systems and the conversion or migration of records on electronic media from one system to another. For text records in the absence of other conversion capabilities, the word processing or text creation system must be able to import and export files in the ASCII format as prescribed by Federal Information Processing Standard Publication (FIPS PUB) Number 1-2; entitled Coded Character Sets - 7-Bit American National Standard Code for Information Interchange (7-Bit ASCII) (1986, R2002), which is hereby incorporated by reference, and made a part of this rule. This publication is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, U.S. Department of Commerce, Springfield, VA 22161.

(2) Provide for the disposition of the records including, when appropriate, transfer to the Oregon State Archives in the format requested by the State Archivist.

(3) Electronic records must remain accessible during their entire authorized retention period.

Stat. Auth.: ORS 192.050, 192.060 & 192.105
 Stats. Implemented: 357.825(2), 357.855 & 357.895
 Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0075

Maintenance and Backup Standards

Agency electronic records systems must meet the following minimum requirements to ensure the ongoing maintenance of electronic records:

(1) Electronic storage media must be maintained in an environment with a constant temperature from 65 to 75 Degrees Fahrenheit not to fluctuate more than +/- 5 Degrees and relative humidity not to exceed 50% (ANSI/AIIM TR 25-1995).

(2) Electronic records stored on magnetic media must not be stored closer than 2 inches from sources of magnetic fields, including generators, elevators, transformers, loudspeakers, microphones, headphones, magnetic cabinet latches and magnetized tools. They must not be stored in metal containers unless the metal is non-magnetic.

(3) Storage containers must be resistant to impact, dust intrusion and moisture.

(4) Official copies of electronic records must be maintained by personnel properly trained in the handling of records and associated equipment.

(5) Written policies and procedures must be established and adopted by the agency for external labeling of the contents of disks, tapes, flash or hard drives or other storage media so that all authorized users can identify and retrieve the stored information.

(6) Storage media must be converted, as necessary, to provide compatibility with the agency's current hardware and software, ensuring that information is not lost due to changing technology or deterioration of storage media. Before conversion of information to different media, agencies must determine that authorized disposition of the electronic records can be implemented after conversion.

(7) Electronic records systems must be backed up on a regularly scheduled basis according to written agency policies and procedures to safeguard against the loss of information due to equipment malfunctions or human error.

(8) Backups must be stored and maintained in off-site storage areas meeting the requirements of 166-020-0015, 166-020-0045 and 166-017-0075(1), and must be located in buildings separate from the location of the records that have been copied.

Stat. Auth.: ORS 192.050, 192.060 & 192.105
 Stats. Implemented: 357.825(2), 357.855 & 357.895
 Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0085**Records Retention Requirements**

Agencies must develop and adopt policies and procedures to ensure that electronic records are retained and managed as specified in a records retention schedule approved by the State Archivist (166-030-0026 or 166-030-0027). These retention policies and procedures must include provisions for:

- (1) Scheduling the retention and disposition of all electronic records, as well as related access documentation and indexes, in accordance with approved records retention schedules developed and authorized by the State Archivist.
- (2) Identifying, maintaining and protecting essential records and essential records systems (OAR 166-020-0045).
- (3) Establishing procedures for regular recopying, reformatting, and other necessary maintenance to ensure the retention and usability of the electronic records throughout their authorized retention period so that the records remain accessible.
- (4) Ensuring that electronic records specified in OAR 166-030-0026(4) are not destroyed without the written permission of the State Archivist.

Stat. Auth.: ORS 192.050, 192.060 & 192.105

Stats. Implemented: 357.825(2), 357.855 & 357.895

Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0090**Records Destruction Requirements for Electronic Records**

Agency electronic records may be destroyed only in accordance with the provisions of a records retention schedule approved by the State Archivist. Each agency must ensure:

- (1) Electronic records which are confidential by law and negotiable instruments (even when cancelled or satisfied in writing) and records that contain sensitive, proprietary, or security information must be destroyed so that the image and confidential metadata are irreversibly non-retrievable, either through electronic or physical destruction as specified below:
 - (a) Electronic records stored on magnetic media must be degaussed or "bulk erased" and then irreversibly reformatted to ensure the data/information cannot be retrieved.
 - (b) Electronic records held on optical media may be destroyed by cutting, crushing, shredding, or other physical means of destruction. Rewritable optical disks must be irreversibly reformatted before being disposed of or re-used.
 - (c) Electronic records stored on hard drives or flash drives of personal computers and servers must be irreversibly reformatted before computers are disposed of. If the agency is unable to determine whether a hard drive or flash drive has been irreversibly reformatted, it must be physically destroyed.
 - (d) For additional guidance on data sanitation and destruction, refer to NIST SP 800-88, Guidelines for Media Sanitization and DoD 5220.22-M.
- (2) Expungement of digital images stored on WORM optical media must conform to the Expungement of Information Recorded on Optical Write-Once-Read-Many (WORM) Systems (TR28-1991) which is incorporated by reference and is available from Association of Information and Image Management, 1100 Wayne Avenue, Suite 1100, Silver Spring, MD 20910 or the State Archives.

Stat. Auth.: ORS 192.050, 192.060 & 192.105

Stats. Implemented: 357.825(2), 357.855 & 357.895

Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

166-017-0095**Use of Alternate Formats and New Technologies for Public Records**

- (1) If adopting new formats or new technologies for public records, such as text messages, social networking sites, and alternate private email accounts, agencies must ensure all actions comply with the requirements of the Oregon Revised Statutes and the rules found in OAR 166 will be met.
- (2) If an agency utilizes private records storage facilities such as cloud storage, the agency must ensure that they maintain ownership of all of the agency's stored public records.

Stat. Auth.: ORS 192.050, 192.060 & 192.105

Stats. Implemented: 357.825(2), 357.855 & 357.895

Hist.: OSA 1-2016, f. & cert. ef. 5-5-16

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with the published version are satisfied in favor of the Administrative Order. The Oregon Administrative Rules and the Oregon Bulletin are copyrighted by the Oregon Secretary of State. Terms and Conditions of Use

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State Archives • 800 Summer St. NE • Salem, OR 97310



Oregon Records Management Solution

The Oregon Secretary of State Archives Division, Chaves Consulting, Inc. (CCI) and Arikkan, Inc. have formed a unique public-private partnership to implement the first statewide electronic records management solution of its kind in the country.

With the ever-increasing 1) Requests by the public for records and discovery, 2) Need to manage and search electronic and paper documents, and 3) Cost of electronic and paper records storage, Oregon's Records Management Solution meets those needs through an innovative SaaS (Software as a Service) model. The model has been designed to fulfill agencies' records management, hardware, software, training, and support needs without the requirement of an up-front investment.

ORMS Advantages:

- Partnership with the Oregon Archives Division ensures legally compliant records rules and configuration
- Solution proven effective through previous implementations at the Oregon Secretary of State Offices and Oregon Pilot Agencies
- Shifts agencies' investment from a capital to an operational expense
- Most cost-effective, in the cloud, records management solution available based on monthly per-user cost which includes:
 - Software, hardware, 24/7 Oregon-based ORMS Help Desk, ongoing training, data storage, ongoing hardware and software maintenance and upgrades
 - No upfront infrastructure costs or maintenance required by the agencies for *Standard Services*; additional services are available at contract rates
 - Updates, webinars, newsletters, conference calls, and remote access sessions available for agencies in their offices, on their desktop
 - Single point of contact to answer agency questions and resolve issues
- Use of Hewlett Packard TRIM® Records Management Software which delivers comprehensive tools and interfaces available. Features include:
 - Department of Defense 5015.2 certified to provide highest level of information security
 - Scheduled and automated destruction of records to reduce legal risk and liability and storage needs
 - Robust search and retrieval capabilities
- Central data repository located in state-of-the-art Tier 3+ data center located in a secure Oregon location
- Working with Oregon-based CCI and Arikkan which have a combined forty-seven year history of delivering customer service and support to Oregon State and local government agencies that goes Beyond the Call®
- Additional records management services available through CCI and Arikkan as part of ORMS Master Agreement

- ORMS Help Desk provides Oregon agencies ongoing:
 - 24/7 support
 - Up-dates, webinars, newsletters, conference calls, and *Go To Meeting* sessions which allows CCI to remotely work with agencies on their desktop
 - Single point of contact to answer agency questions and resolve issues

For more information contact:

Karen Kolb Schoeningh,
ORMS Project Director
541-523-1029 ext. 451
karen@chavesconsulting.com

or

Rebecca Van Cleave
ORMS Team Lead
888-354-2006
ormshelp@chavessupport.com

Oregon Records Management Solution

Subscription Pricing

Total Number of ORMS Users (all agencies)	Cost per Month per Additional User	Cost per Month for 1-10 Users
1 to 3000	\$37.02	\$370.20
3,001 to 4,000	\$29.74	\$297.40
4,001 to 5,000	\$26.66	\$266.60
5,001 to 6,000	\$24.06	\$240.60
6,001 to 7,000	\$21.61	\$216.10
7,001 to 8,000	\$19.62	\$196.20
8,001 to 9,000	\$18.81	\$188.10
9,001 to 10,000	\$17.53	\$175.30
10,001 to 11,000	\$16.55	\$165.50
11,001 to 12,000	\$15.71	\$157.10
12,001 to 13,000	\$14.68	\$146.80
13,001 to 14,000	\$14.02	\$140.20
14,001 to 15,000	\$13.55	\$135.50
15,001 to 16,000	\$12.54	\$125.40
16,001 to 17,000	\$11.96	\$119.60
17,001 to 18,000	\$11.44	\$114.40
18,001 to 19,000	\$10.99	\$109.90
19,001 to 20,000	\$10.54	\$105.40



Oregon Records Management Solution (ORMS) Data Storage and Transfer

Included in the monthly per user cost:

- 10GB of data storage per user
- 1GB of data transfer per user per month.

These amounts will be metered *at the agency level*. These amounts are based on an average of standard user disk space and data transfer required.

For example, if there were a total of 1,000 users in the State or Authorized Purchaser agency, the amount of disk storage allocated would be 10,000GB (10TB) and the amount of data transfer per month would be 1,000GB (1TB).

If the agency were to *exceed* those amounts in a month, the cost for those Additional Services will be:

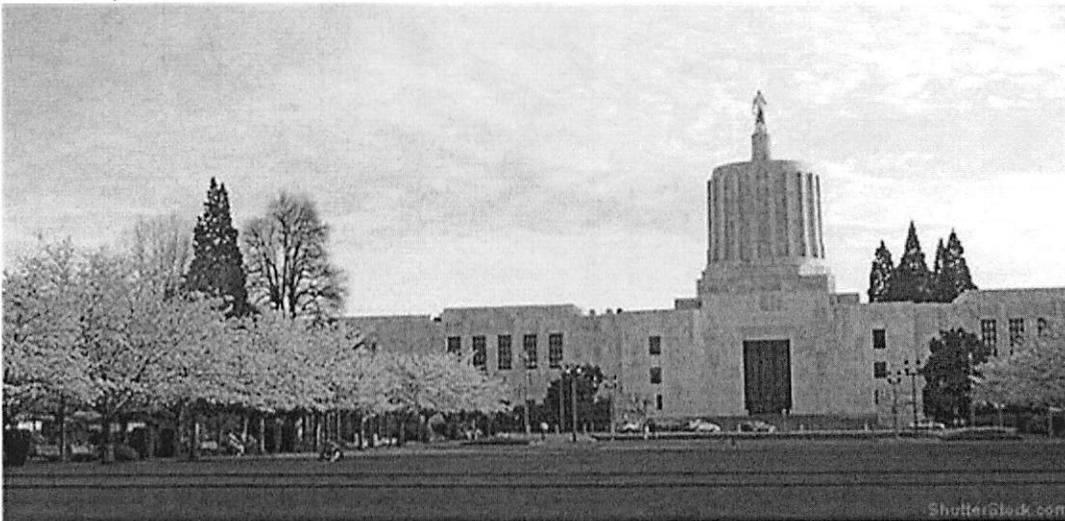
- \$7.00 per 10GB of additional storage per month and
- \$1.20 per 1GB of additional data transfer per month

The amount of data storage included in the monthly per user price increases as the number of users in the agency grows.



Oregon rides cloud to statewide records management system

- By [Rutrell Yasin](#)
- Jan 09, 2013



A cloud-based records management system in the office of Oregon's Secretary of State produced such improvements in access and processing time that officials are now expanding it statewide.

The Oregon Records Management Solution (ORMS) will let state, city and county agencies manage and provide access to records in an efficient, uniform manner and will save money on storage, risk and litigation costs, officials said.

ORMS, currently a pilot program that originated in the Secretary of State's office, uses HP TRIM, enterprise document and records management software developed by Autonomy, an HP company, to manage digital and physical records. Prior to implementing HP TRIM, employees had to sift through backup tapes, e-mails and file servers to satisfy public records requests.

With HP TRIM, requests are processed much faster. For example, a request for the 80,000 e-mails generated by the Secretary of State since taking office now takes 90 seconds to fulfill, instead of days. ORMS pilot agencies are experiencing similar benefits. Requests for public documents that used to take a week to process now take 30 seconds, Oregon officials said.

"We realized that the benefits we experienced at the Secretary of State's office could be broadened to encompass every city, county and state agency in Oregon," said Oregon Secretary of State Kate Brown, in a [release](#). "And since agencies access ORMS on a per-user basis, the smallest agencies can have the same transformative public records management as organizations with thousands of employees and larger budgets."

ORMS was developed through a public/private collaboration with Chaves Consulting Inc., Autonomy and Arikkan Inc. ORMS incorporates HP TRIM as part of a software-as-a-service solution to make access to government records easier, more transparent and affordable, [Oregon officials said](#). ORMS runs in a private government cloud built in partnership between CCI, Arikkan and Sace Inc. Cloud Records Management Solutions.

"Most state archivists don't manage information until after documents have been created and used, but that process is cumbersome and does not work very well," said Mary Beth Herkert, archivist for Oregon. "HP TRIM lets us pivot to a front-end management solution where the records are managed as they are created," Herkert said.

ORMS will help agencies comply with Oregon public records law, which require scheduled notification of automated retention and destruction of records, officials said. Additionally, ORMS will support eDiscovery projects when legal teams must produce and review large volumes of information. Currently, more than 700 employees across 11 city, county and state agencies have used ORMS with HP TRIM to manage more than one million documents during the pilot program, Oregon officials said.

In addition to the Secretary of State's Office, pilot agencies include: Oregon's Energy and Human Services departments, Public Utility Commission, Tualatin Hills Parks and Recreation District and the cities of Beaverton, Dundee, Hillsboro, Milwaukie and West Linn. In addition, the cities of St. Helens and Lebanon, as well as Tillamook County, have come on board as early adopters, officials said.

The Secretary of State's office anticipates more agencies will use ORMS once the pilot program is over. Oregon officials have also submitted a federal grant in order to bring all of the current governor's records online as well as to share technologies with the State of Washington.

<http://gcn.com/articles/2013/01/09/oregon-cloud-statewide-records-management-system.aspx>

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Source: Wall Street Journal MarketWatch

press release

Jan. 8, 2013, 4:00 a.m. EST

State of Oregon Embraces HP TRIM for Statewide Cloud-based Records Management Program

Technology from Autonomy, an HP Company, enables transparent, efficient records management with lowered risk and costs



PR Newswire

United Business Media

PALO ALTO, Calif., Jan. 8, 2013 /PRNewswire via COMTEX/ -- Autonomy, an HP company, today announced that the State of Oregon has selected HP TRIM as the cornerstone of a cloud-based records management system that will allow state, city and county agencies to manage, secure and provide access to digital and physical documents.

Called Oregon Records Management Solution (ORMS), the cloud-based system is the result of a unique public-private collaboration between Autonomy, Chaves Consulting and Arikkan, utilizing HP TRIM to implement the first statewide electronic records management solution of its kind in the country. ORMS implements HP TRIM in the cloud as part of a Software-as-a-Service solution to make access to government records easier, more transparent, and affordable.

Currently a pilot program, ORMS will provide agencies with the ability to manage records in an efficient, uniform manner and save money on storage, risk and litigation costs. ORMS will allow agencies to comply with Oregon public records law for scheduled notification of automated retention and destruction of records. In addition, ORMS will support eDiscovery projects when legal teams must produce and review large volumes of information. Currently, over 700 employees across 11 city, county and state agencies have used ORMS with HP TRIM to manage more than 1 million documents during the pilot program.

The pilot program originated in the office of the Oregon Secretary of State, which used HP TRIM to manage its digital and physical records. Before using HP TRIM, employees had to go through back-up tapes, emails and file servers to satisfy public records requests. With HP TRIM, requests are processed exponentially faster. For example, a request for the 80,000 emails generated by the Secretary of State since taking office took 90 seconds to fulfill, instead of days. ORMS pilot agencies are experiencing similar benefits, for example requests for public documents that used to take a week to process now take 30 seconds.

"We realized that the benefits we experienced at the Secretary of State's office could be broadened to encompass every city, county and state agency in Oregon," said Oregon Secretary of State Kate Brown. "And since agencies access ORMS on a per-user basis, the smallest agencies can have the same transformative public records management as organizations with thousands of employees and larger budgets. ORMS with HP TRIM truly levels the playing field when it comes to managing public records."

"Most state archivists don't manage information until after documents have been created and used, but that process is cumbersome and does not work very well," said Mary Beth Herkert, archivist, State of Oregon. "HP TRIM lets us pivot to a front-end management solution where the records are managed as they are created."

In addition to the Secretary of State's Office, pilot agencies include: Oregon Department of Energy; Oregon Department of Human Services; Public Utility Commission; Tualatin Hills Parks and Recreation District; and the cities of Beaverton, Dundee, Hillsboro, Milwaukie and West Linn. In addition, the cities of St. Helens and Lebanon, as well as Tillamook County, have come on board as early adopters.

The Secretary of State's office anticipates more agencies coming on board once the pilot program is over. There is also a federal grant in play for bringing all of the current Oregon governor's records online as well as sharing technologies with the State of Washington.

Because ORMS is cloud-based, there are no up-front infrastructure costs. It also offers a smaller IT footprint and reduced equipment, power and facilities expenses. ORMS fulfills agencies' needs for records management hardware, software, training and support without the requirement of an up-front investment.

"Government agencies are under a lot of pressure, as the public expects their agencies to be working efficiently and cost effectively, while agencies are constantly having their resources cut and are now expected to do more with less," said Neil Araujo, general manager, Enterprise Content Management, Autonomy, an HP Company. "Implementing a records management solution like HP TRIM that is purpose-built to do the heavy lifting is an ideal way for government agencies to ratchet up efficiencies while still complying with state law."

About Chaves Consulting (CCI) Since 1980, CCI has designed and implemented on-time, cost-effective, complex information system solutions for state and local government agencies

throughout the United States. CCI has built a reputation for delivering exceptional customer service and product excellence that goes Beyond the Call[®]. More information about CCI is available at www.chavesconsulting.com or by calling 800-435-4633.

About Arikkan, Inc. Arikkan, Inc. is a leading technology integrator known for delivering on-time, complex, innovative Enterprise Solutions for state and local government throughout the United States. Arikkan has built a reputation for delivering exceptional client service and product excellence that exceeds client expectations. More information about Arikkan, Inc. is available by e-mail info@arikkan.com or by calling 360-553-7966.

About CCI and Arikkan Joint Ventures Synergy Data Center and Services (www.synergydcs.com) - A state-of-the-art Tier 3 data center built in partnership between CCI, Arikkan, Inc., and Sace Inc. Cloud Records Management Solutions[™] (CRMSTM) - The nation's first live Private Government Cloud for Records Management, developed and implemented through a Joint Venture between Arikkan, Inc. and Chaves Consulting, Inc. (CCI).

About Autonomy Autonomy, an HP Company, is a global leader in software that processes human information, or unstructured data, including social media, email, video, audio, text and web pages, etc. Autonomy's powerful management and analytic tools for structured information together with its ability to extract meaning in real time from all forms of information, regardless of format, is a unique tool for companies seeking to get the most out of their data. Autonomy's product portfolio helps power companies through enterprise search analytics, business process management and OEM operations. Autonomy also offers information governance solutions in areas such as eDiscovery, content management and compliance, as well as marketing solutions that help companies grow revenue, such as web content management, online marketing optimization and rich media management. Please visit www.autonomy.com to find out more.

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www.hp.com/go/newsroom

SOURCE Autonomy, an HP Company

CITY OF BROOKINGS

Council WORKSHOP Report

Workshop Date: October 3, 2016

Originating Dept: PWDS, Planning



Signature (submitted by)



City Manager Approval

Subject: Limitation on length of stay at Elks Lodge RV Park.

Recommendation: Information only.

Financial Impact: None.

Approved by Finance & Human Resources Director: _____

Background/Discussion: The Elks Lodge received approval from the Planning Commission with a Conditional Use Permit (CUP) in 1997 to develop and operate an RV park. One of the conditions of approval limited the length guests could stay to 14 days. In addition to the general criteria for CUPs there are some specific criteria for RV parks found in Brookings Municipal Code (BMC) Chapter 17.124.150. These criteria do not place limitations on the length guests can stay.

The BMC provides a process for minor changes to land use approvals such as CUPs. Should the Elks Lodge wish to revise or remove any condition of approval, they would need to submit a minor change application for review by the Planning Commission.

CITY OF BROOKINGS

COUNCIL WORKSHOP REPORT

Meeting Date: October 3rd, 2016

Submitted by: **Lt. Donny Dotson**

Originating Dept: Public Safety

City Manager: 

Subject: Signage at Pacific and Hillside Avenues

Financial Impact: Cost of sign and installation.

Background/Discussion:

Councilor Hamilton expressed concern regarding possible confusion for drivers headed east on Pacific who may not realize Hillside traffic headed south does not stop.

Staff determined the proper remedy would be installation of a "Cross Traffic Does Not Stop" sign visible to Pacific Avenue eastbound drivers.

Historic data for traffic crashes at the subject intersection does not support reconfiguration of the intersection or additional stop signs.

The above mentioned sign has been ordered and will be installed by Public Works upon arrival.

No Council action required.

Policy Considerations: None

Attachment(s):

CITY OF BROOKINGS

Council WORKSHOP Report

Workshop Date: October 3, 2016



Signature (submitted by)

Originating Dept: City Manager

City Manager Approval

Subject: Long-term Strategic Plan

Background/Discussion: See the attached Long-term Strategic Plan red-lined for Workshop discussion.

Attachment(s):

- Long-term Strategic Plan red-lined

City of Brookings 2016 Strategic Plan - Long Term (>24 Months)

GOAL 1: An Effective, Responsive, Ethical City Government That Is Fiscally Sustainable.					
Objectives		Action Items		Resp Party	Status/Notes/Process/Dates
1	Relevant, clear policy documents and regulations	1.1	Appoint Charter Review Committee	CC	Charter revisions on 2017 ballot
		1.2	Comprehensive review of BMC	CM/CR	To follow charter review
2	Sufficient revenue to sustain City services at appropriate levels.				
3	Competitive employee compensation through a merit-based system.	3.1	Provide competitive employee compensation	CM	
4	Sustain positive workplace environment and employee morale.	4.1	Relocate or expand City Hall/Police/Fire	CM	Explore alternative of adding 2nd floor to existing building or infill
5	Balanced revenue system that recognizes demands on City services by				
6	Stable, effective and accountable management.	6.1	Review employee compensation plan annually	CM	
		6.2	Update employment standards	FHD	
7	Succession planning.	7.1	Identify and provide training opportunities to current employees to encourage internal promotion	CM	
8	Maximize non-City revenue resources to pay for services provided to	8.1	Explore resident/non-resident fee structures for park use	PTS	implemented
9	Assure internal consistency and efficiency.				
10	Utilize local contractors.				
GOAL 2: A Safe Community					
Objectives		Action Items		Resp Party	Status/Notes
1	Encourage new private investment.				
2	Adequately staff, equipped and housed police and fire departments	2.1	Evaluate future space requirements for police/fire	CM/PSD	
3	Maintain streets in safe/serviceable condition.				
4	Provide clean drinking water and compliant waste water treatment.	4.1	Develop water/sewer master plans and companion financing plans	PWD/FHD	Financing plans insufficient
5	Improve personal/family preparedness.				
6	Improve community health care.	6.1	Expand Curry Medical Center/Establish Emergency Department	CM	On hold pending sufficient CHN operating capital
7	Improve pedestrian safety.	7.1	Develop looped walkway from downtown to public parks	PWD	Purchase private property to facilitate
		7.2	Develop pedestrian connection to waterfront	PWD	
		7.3	Develop Citywide sidewalk program	PWD	Preliminary map; reviewed @ 9/06 ??
		7.4	Provide sidewalks along Chetco from bridge to Harris Beach State Park	PWD	ODOT application pending
		7.5	Pacific Avenue Sidewalk	PWD	Consolidate with 7.3?
		7.6	Reconstruct uncompleted blocks of Hemlock Street	PWD	Some resurfacing scheduled
GOAL 3: Influence Economic Growth / Improve Quality of Life					
Objectives		Action Items		Resp Party	Status/Notes
1	Complete approved capital projects in a timely and cost efficient manner.				
2	Support economic growth by providing infrastructure	2.1	Develop long-term plan for Public Works Shop	PWD	
		2.2	Develop parking lots at Fern/Spruce/Railroad and new RV Parking Lot	PWD	Need funding
		2.3	Resolve Airport industrial area access restrictions	CM	Meetings with FAA, congressman
3	Increase coastal access	3.1	Develop coastal access	PWD	
		3.2	Develop Tanbark beach access points/overlook	PWD/PTS	Plan/budget developed for Tanbark Overlook
		3.3	Consider development of beach access at Welcome Sign and Cove Road	PWD	
		3.4	ADA access improvements at beaches	PTS	
4	Recognize economic trends through policies, public improvements and standards	4.1	Update urban renewal plan	CM	Reappoint URAC
5	Establish pro-growth policy				
6	Attract tourists to stop in downtown.	6.1	Support programs to promote downtown development, ie., historic preservation and low-cost capital improvement programs for businesses	CM	Participate in Main Street program
		6.2	Utilize URA funds to encourage high-amenity commercial development in downtown core area	CM	URA funding fully committed to other projects.
		6.3	Create Central Plaza, new walkways and plazas as listed in the UR Plan	PWD	Will require purchase of lot behind Central Building
		6.4	Pursue undergrounding of overhead utilities	PWD	Work w/CCEC to develop priority plan
		6.5	Develop new downtown bike paths	PWD	Railroad Street project 2017 plus sharrow on side streets
		6.6	Develop public restrooms in the downtown area	PWD	

KEY: BC=Budget Comm. BLD=Bldg Ofc. CA=City Atty. CC=City Council CM=City Mgr FHD=Fin. HR Dir.
PM=Planning Mgr. PTS=Parks Tech Svc. Sup. PSD=Police Safety Dir. PWD=Public Works Dev. Dir. Yellow = Remove?

City of Brookings 2016 Strategic Plan - Long Term (>24 Months)

GOAL 3: Influence Economic Growth / Improve Quality of Life (Continued)					
Objectives		Action Items		Resp Party	Status/Notes
		6.7	Participate in regional tourism promotion efforts	CM	Participate in OCVA, Travel Oregon
7	Maintain and enhance quality of coastal experience.	7.1	Expand bike paths 6-10 miles beyond City limits	PWD	Inactive
		7.2	Develop local nature interpretative areas	PTS	To be included in Parks Master Plan update.
8	Conserve open space and protect natural, scenic resources and cultural and historic areas while providing for orderly growth and development.				
9	Provide additional recreational opportunities/facilities to include neighborhood parks/beach/river access points/ possible downtown park.	9.1	Develop wetland park at Old Mill Pond	PTS	Will require collaboration with property owner
		9.2	Develop Aquatics & Recreation Center	PTS	In development; progressing toward funding campaign
		9.3	Develop Community Center	PTS	
10	Implement policies/items under economic section of Comprehensive Plan.				
GOAL 4: Effective Intergovernmental Relations					
Objectives		Action Items		Resp Party	Status/Notes
1	Influence regional, state and national policy on issues important to achieving City goals.	1.1	Develop working relationships with regional economic development agencies	CM	Joined South Coast Development Council
2	Secure grant funding.	2.1		CM	Primary assignment of new Management Analyst
3	Achieve City goals through strategic partnerships.	3.1	Develop service agreements with other cities and special districts		Contract with County for equipment maintenance
		3.2	Participate in regional agencies, such as SWACT	CM	CM is SWACT Chair
4	Prepare for potential County fiscal failure.	4.1	Maintain service levels to minimize dependence on mutual aid	PSD	